TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~249.~~ 5-3

MICHAEL O'HARA AND FRANCES A. O'HARA, HIS WIFE, IN THE RIGHT OF SAID FRANCES A. O'HARA, APPELLANTS,

vs.

JOHN G. MACCONNELL AND JOHN M. KENNEDY, ASSIGNEES IN BANKRUPTCY OF MICHAEL O'HARA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

FILED SEPTEMBER 16, 1874.

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1 In the circuit court of the United States of America in and for the western district of Pennsylvania. In chancery.

JOHN G. MACCONNELL AND JOHN M. KENNEDY, assignees in bankruptcy of Michael O'Hara,
vs.
MICHAEL O'HARA, FRANCIS A. O'HARA, HIS wife, Dr. A. M. Barr, in his own right, and as guardian of said Francis A. O'Hara, and Christian Dellenbaugh.

Bill of complaint of John G. McConnell and John M. Kennedy, assignees in bankruptcy of Michael O'Hara.

The complainants respectfully show to the hon. the judges of said court as follows, to wit:

First. That at the time of the committing of the several grievances hereinafter set forth, the said Michael O'Hara was, and still is, a resident and citizen of the said western district of Pennsylvania, and of that part of the county of Allegheny, in said western district, composing the twenty-second congressional district of Pennsylvania, as also was and is the said Francis A. O'Hara, his wife. The said Francis A. O'Hara, as complainants are informed and believe, is still a minor, under the age of twenty-one years, and has for the guardian of her property the
2 said Dr. A. M. Barr, who is also a resident of said western district of Pennsylvania, as is also the said Christian Dellenbaugh.

Second. On the first day of November, 1864, the said Michael O'Hara was possessed of a large estate, both real and personal, and on that day he entered into a copartnership with John Pastorious, Adolphus C. Schultz, and Wm. T. Modes, in the manufacturing and selling of glassware, in the said western district of Pennsylvania, under the style and firm-name of Pastorious, Schultz and Company, each of said parties having and being the owner of one-fourth interest in said concern, and the said copartnership to continue for two years from the said first day of November, 1864.

On the 23rd day of January, 1865, the said Michael O'Hara purchased the interest of the said John Pastorious in said firm, and also one-half of the interest of the said Adolphus C. Schultz therein, and thereupon became the owner of five-eighths of said concern. On the same day a new copartnership was formed for the purpose of carrying on the said business in the said district, said firm being composed of the said Michael O'Hara, the said Adolphus C. Schultz, and the said William F. Modes, and its name being O'Hara, Schultz and Company. In this firm the interest of said Michael O'Hara was five-eighths, that of the said Adolphus C. Schultz one-eighth, and that of said William F. Modes two-eighths; and this firm also was to terminate at the end of
3 two years from the first of November, 1864.

On the 19th of May, 1865, the said William F. Modes sold his interest in said firm to J. H. Robinson, and the said firm was continued under the firm-name until on or about the 31st of October, 1866, when the said J. H. Robinson bought the interest of the said Adolphus C. Schultz therein; and thereupon a new copartnership was formed between the said Michael O'Hara and the said J. H. Robinson, under the firm-name of O'Hara and Robinson, for the purpose of carrying on the same glass business in the said district, the said Michael O'Hara own-

ing five-eighths and the said J. H. Robinson owning three-eighths thereof.

Third. When the first of said copartnerships was formed, the said Michael O'Hara was the owner of real estate of great value, and also of a large amount of stocks and other property of great value; and, whilst the said glass business was so being carried on by said successive firms, the said Michael O'Hara sold or otherwise disposed of a large amount of said real estate of great value to various persons, and also disposed of a large amount of personal property of great value to various persons, and assigned a large amount of stocks of great value in trust for his wife, the said Francis A. O'Hara, and for the benefit of others of his own or his wife's relatives. At the same time, the said Michael
4 O'Hara contracted large debts, both on his own individual account and on account of said successive firms. By the tenth day of July, 1866, he, the said Michael O'Hara, had become largely indebted to the said successive firms, and he had become indebted to other parties, both on his own individual account and as a member of said successive firms, and by that time he had conveyed away all his real estate in Pennsylvania that these complainants are aware of except fourteen acres and one hundred and fifty perches of land in what was then Liberty, formerly Peebles Township, but is now the ward of the city of Pittsburgh, in said county of Allegheny, which land is hereinafter particularly described; and he sold or otherwise disposed of all his personal property except his interest in said firms, a few shares of railroad stock, and a few articles of comparatively little value—the said property of the said Michael O'Hara not disposed of by him being entirely insufficient, as your complainants are informed and believe, to pay the debts which he then owed.

On the said tenth day of July, 1866, the said Michael O'Hara, being largely indebted as aforesaid, did, with his wife, the said Francis O'Hara, make, execute, and deliver a deed, bearing date that day, and recorded on the third day of August, 1866, in the office for the recording of deed', &c., in said county of Allegheny, in deed-book vol. 201, pages 629 et seq. for the said fourteen acres and one hundred and fifty perches of land to William Harrison and G. L. B. Fetter-
5 man, in trust for the said Francis A. O'Hara, wife of him, the said Michael O'Hara, the consideration expressed in said deed being one dollar and the natural love and affection of him, the said Michael O'Hara, for her, the said Francis A. O'Hara, his wife as aforesaid. The said piece of land is described in said deed as follows, to wit: A certain lot or piece of ground situate in Liberty (formerly Peebles) Township, Allegheny County, Pennsylvania, and bounded and described as follows, viz: Beginning on the southern side of Mechanics' turnpike, at the line of George Berry's land, and thence by the line of said Berry's land south 21° east one thousand five hundred and twenty-two feet; thence by land now or late of James B. Murray south 71° east four hundred and two feet to a post; thence by land of John McFarland, deceased, north 21° west one thousand four hundred and ninety-nine feet to the Mechanics' turnpike; thence by the said turnpike north 68° 10′ west one hundred and eighty-two feet to a pin; thence by said turnpike north 66° 20′ east two hundred and forty-nine feet to the place of beginning, containing fourteen acres and one hundred and fifty perches. These complainants attach hereto a copy of said deed, marked "Exhibit A," and pray that it may be made a part of this bill of complaint.

Fourth. On or about the day of June, 1867, the glass-works of said firm of O'Hara and Robinson, being situate in Lower St. Clair Township,

in said county of Allegheny, were consumed by fire. At the time they were so consumed there was a large amount of insurance upon
6 them, and on the tools, stock, manufactured and unmanufactured, in and connected with said glass works, in various insurance offices in the city of Pittsburgh. Upon this insurance the said Michael O'Hara, as a member of said firm of O'Hara and Robinson, on or about the day of , 1867, drew from the insurance companies in which said glass-works, &c., were insured as aforesaid, & on account of the loss thereon by said fire, about the sum of $11,500. At that time the aforesaid William Harrison was guardian of the said Francis A. O'Hara, wife of the said Michael O'Hara; and when he, the said Michael O'Hara, drew the said insurance money he gave above $7,000 thereof to the said William Harrison, as the guardian of his said wife, on the pretence that the said firm of O'Hara and Robinson owed the said Francis A. O'Hara that amount of money, whereas these complainants beli've and so charge that the said firm of O'Hara and Robinson did not owe the said Francis A. O'Hara anything at all.

Fifth. And these complainants further say that, on the 27th day of August, 1867, O. H. P. Williams, George E. Brewer, James P. Brewer, and Elijah H. Jones, partners, doing business under the firm and style of Williams and Company, filed a petition in the district court of the United States in and for the western district of Pennsylvania, at No. 99, in bankruptcy, praying that the said Michael O'Hara, for the causes therein set forth, might be declared a bankrupt, and in pursuance
7 of said petition it was so proceeded in, in said district court, that the said Michael O'Hara was, on the 9th day of November, 1867, duly declared and decreed a bankrupt under the provisions of the act of Congress, approved the 2nd day of March, 1867, entitled An act to establish a uniform system of bankruptcy throughout the United States, in regard to involuntary bankruptcy.

After the said Michael O'Hara was so decreed a bankrupt, to wit, on the 11th day of December, 1867, a meeting of his creditors who had proved their debts, was held at the office of Samuel Harper, esq., the register in bankruptcy in and for the said twenty-second congressional district of Pennsylvania; and at said meeting these complainants were duly chosen the assignees in bankruptcy of said Michael O'Hara, which choice was duly confirmed by said district court of the United States, and an assignment of the property and effects of the said Michael O'Hara was duly made on the 17th day of December, 1867, by the said Samuel Harper, esq., the said register in bankruptcy, to these complainants.

Sixth. And these complainants further say that the said Michael O'Hara in making a return of his property and effects under the provisions of the said act of Congress, did not return or make any mention of the said fourteen acres and one hundred and fifty perches of land situate and described as aforesaid, but wholly neglected to
8 return the same or give any account thereof.

These complainants believe and so charge that said fourteen acres and one hundred and fifty perches of land actually belonged to and was the property of the said Michael O'Hara, at the time he was declared a bankrupt, as aforesaid; that the deed made by him as aforesaid, to the said William Harrison and G. L. B. Fetterman in trust for his said wife, and for a nominal consideration, was in fact a deed of gift made by him the said Michael O'Hara when he was largely indebted as aforesaid, and when he was about to become, as he did thereafter actually become, still more largely indebted; and that said deed of

gift was so made by him in fraud of his creditors, and to hinder and delay them in the collection of and to prevent them from collecting the money which he owed them then and still owes them.

Seventh. After these complainants had been appointed assignees in bankruptcy of the said Michael O'Hara, and the assig'ment of his property and effects had been made to them as aforesaid, they claimed the said fourteen acres and one hundred and fifty perches of land as part of the property and effects of the said Michael O'Hara, for the purpose of selling the same to raise money to pay his, the said Michael's, debts, having found that the other property of said Michael was entirely insufficient to pay his debts; and after considerable delay
9 the said Michael O'Hara and Francis A. O'Hara, his wife, agreed that the said William Harrison and G. L. B. Fetterman should convey the said land to these complainants, together with N. P. Fetterman, esq., to be disposed of for the purpose of paying the debts of the said Michael O'Hara; but the said William Harrison applied to the court of common pleas of Allegheny County, the court which, under the laws of Pennsylvania, had jurisdiction of such matters, to be discharged from his trust under the said deed to him and the said G. L. B. Fetterman, and the said court, on the thirtieth day of May, 1868, did discharge him therefrom, as will at large appear by reference to the records of said court at No. 1117 of June term, 1868.

By the discharge of the said William Harrison the said G. L. B. Fetterman was left the sole trustee under the aforesaid deed of trust, and, on the 16th day of May, 1868, he, together with the said Michael O'Hara and Francis A. O'Hara, his wife, by their deed dated that day and duly acknowledged the 23rd day of May, 1868, did convey the said fourteen acres and one hundred and fifty perches of land to these complainants and the said N. P. Fetterman.

Eighth. On the 17th day of February, 1866, the said Michael O'Hara executed and delivered to the aforesaid William Harrison as
10 guardian of *of* the said Francis A. O'Hara, Sarah D. McFarland, and Ada P. McFarland, a mortgage on the said fourteen acres and one hundred and fifty perches of land to secure the payment of a bond bearing even date therewith in the penalty of $24,895.73. This bond and mortgage, it is alleged, and these complainants believe the allegation to be correct, were given by the said Michael O'Hara for the purchase-money of said land. The mortgage bears date before the conveyance of said land by the said Michael O'Hara and his said wife, to the said William Harrison and G. L. B. Fetterman, in trust as aforesaid, but it was not recorded until after the making of that conveyance, the said conveyance having been made on the tenth day of July, 1866, and the mortgage not having been recorded until the 23rd of July, 1866.

Ninth. These complainants, after the making of the assignment in bankruptcy to them as aforesaid, and in pursuance of an order of the said district court of the United States for the purpose and with the assent and approbation of the said N. P. Fetterman, advertised the said fourteen acres and one hundred and fifty perches of land for sale at *at* public vendue, and, on the 16th day of July, 1868, in pursuance of the said advertisements, the same being the notice thereof which
11 they were by law required to give, offered the same for sale by public vendue as aforesaid, whereupon the said Dr. A. M. Barr bade $2,500 per acre, and the same was then and there knocked down to him as the highest and best bidder, and he agreed to take the same and pay for it according to the terms upon which the said sale was

made. The whole amount of purchase-money which the said Barr agreed to pay for said land was thirty-seven thousand three hundred and forty-three dollars and seventy-five cents, ($37,343.75.) Out of this sum, however, the amount of the aforesaid mortgage to William Harrison, guardian, and interest thereon was to be taken, which left the sum of twenty-three thousand and ninety dollars and eighty cents of said purchase-money as applicable by these complainants to the other debts of said Michael O'Hara. In pursuance of said sale these complainants executed and tendered a deed to said Dr. A. M. Barr for said land, but he wholly refused to accept the same, or any title for said land, and pay the said purchase-money according to the terms of said sale.

Tenth. When the said Dr. A. M. Barr refused to accept the title for said land and pay the said the purchase-money, according to the terms of the sale as aforesaid, these complainants again gave due public notice of a sale of said land at public auction, and on
12 two occasions attempted to sell the same; but on both occasions the said Dr. A. M. Barr, as guardian of the said Francis A. O'Hara, caused written notice to be read aloud in the hearing of all persons then and there assembled, setting forth that said premises belonged to the said Francis A. O'Hara, and also that he, the said Dr. A. M. Barr, owned the same in his own right, and warning all persons not to purchase the same, by reason of which notice these complainants were prevented from selling said land on either of said occasions.

These complainants have been informed and believe that the said Dr. A. M. Barr and the said Michael O'Hara and Francis A. O'Hara still persist in setting up the same claim to said land, and declare that whenever these complainants attempt to sell the same, they will give the same notice that they caused to be given on the occasions above spoken of, and thereby prevent these complainants from making any sale of said land for the payment of the debts of the said Michael O'Hara. And these complainants verily believe that, unless restrained by injunction from this court, they will do so, and that thereby the creditors of the said Michael O'Hara will be greatly hindered, delayed, and defrauded.

And these complainants further say that the said Michael O'Hara and the aforesaid J. H. Robinson, as partners under the firm of
13 O'Hara and Robinson, were the owners of certain lots of ground partly in the borough of East Birmingham, and partly in Lower St. Clair township, Allegheny County, Pennsylvania, being Nos. 106, 107, and 108, in C. Ihmsen's plan of said town, and together bounded and described as follows: Beginning at the corner of the school-house lot and Jane street, thence eastwardly along Jane street 72 feet to corner of lot No. 109 in said plan; thence along the same southwardly 109 feet to Harcum's alley; thence along said alley westwardly 72 feet to the school-house lot aforesaid; and thence by the same northwardly 109 feet to Jane street aforesaid, the place of beginning; also all those fifteen lots situate in Brownstown aforesaid, and numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15, in O'Hara and Robinson's plan of lots, and bounded and described as follows, viz: Beginning at the corner of Harcum's alley and McClurg st.; thence along McClurg street southwardly 315 feet 3 inches to land of McClurg's heirs; thence by the same eastwardly 60 feet to other land of McClurg's heirs; thence by the same northwardly 178 feet to lot No. 6; thence by the same eastwardly 37 feet 4 inches to other land of McClurg's heirs; thence along the same northwardly 100 feet to Harcum's alley; and thence by the same westwardly 104 feet $3\frac{3}{16}$ inches to the place of beginning; also

all that lot or piece of ground situate in the borough of East
14 Birmingham, in said county, beginning on the western side of McClurg street, at the distance of 40 feet from the northeast corner of Jane and McClurg streets; thence southwardly along McClurg street 20 feet to a pin; thence westwardly 73 feet 6 inches, to line of lot No. 53, in John Brown's plan of lots; thence northwardly on a line parallel with McClurg street 20 feet, to line of Charles Rice's lot; and thence eastwardly 73 feet 6 inches to McClurg street, the place of beginning, on which is erected a two-story frame dwelling-house.

On a part of these lots the glass-works which were consumed by fire, as aforesaid, were erected. The said Michael O'Hara and J. H. Robinson gave a mortgage on these nineteen lots to Hon. Thos. Mellon to secure him for certain moneys which they owed him, or for which he had become liable for their accommodation. The said mortgage was dated the fifth day of April, 1866, and was recorded in said county of Allegheny, on the thirty-first day of July, 1867, in mortgage-book, vol. 75, page 138. On this mortgage the said Thomas Mellon issued a scire facias, at No. 539, of Novr. term, 1867, in the district court of said county, and obtained judgment thereon upon the 16th day of October, 1867, for the sum of $12,614.36, and costs. On a writ of levari facias, issued on said judgment at No. 147, of November term, 1867, of executions, the said lots of ground were sold, by the sheriff of said
15 county, on the twenty-ninth day of November, 1867, and purchased by the said Thomas Mellon for the sum of $4,000 and a deed for said lots was made and delivered to him by said sheriff, dated the 11th day of November, 1867, and acknowledged the 5th day of September, 1868.

At or after the purchase of said lots by said Thomas Mellon as aforesaid, he agreed that these complainants might sell them and that the purchase-money be credited on his said judgment, and if it amounted to more than would pay the debt, interest, and costs in said judgment, that these complainants should have the excess to be applied towards paying the debts of said firm of O'Hara and Robinson. In pursuance of this arrangement these complainants offered said lots for sale at public auction on the premises, on the fifth day of September, 1868, having given due and timely public notice thereof. At this sale the said Michael O'Hara, the said Francis A. O'Hara, his wife, and the said Dr. A. M. Barr attended. When the said lots were set up for sale by the auctioneer, the said Michael O'Hara bade on them against other bidders, and they were all knocked down by the auctioneer on his, the said Michael O'Hara's bids, at the sum of $13,155 for the whole. The said Michael O'Hara, when said lots were knocked down on his bids gave in the name of Christian Dellenbaugh as the purchaser, and paid to the auc-
16 tioneer the sum of $205 on said purchase. During the time the said Michael O'Hara was bidding in said lots as aforesaid, the said Francis A. O'Hara and Dr. A. M. Barr remained in the carriage within a few yards of where the sale was being made, and near enough to hear all that was going on. The said Christian Dellenbaugh whose name the said Michael O'Hara gave in as the purchaser of said lots, is, as these complainants are informed, believe, and charge, an uncle of the said Francis A. O'Hara, and lives at least a part, if not the whole of the time, with said Francis A. O'Hara, and is of very limited means, entirely too much so to make such a purchase.

The said Thomas Mellon with his wife executed a deed for said lots to said Christian Dellenbaugh, dated the fifth day of September, 1868, and acknowledged the day of November, 1868, and the said deed was

duly tendered by these complainants to the said Christian Dellenbaugh, and payment of the said purchase-money demanded of him according to the terms of the sale, but the said Christian Dellenbaugh did not nor would accept said deed and pay said purchase-money according to the terms of the sale, which terms were cash; and he has not yet accepted said deed or paid purchase-money.

These complainants believe and so charge that the action of the said Michael O'Hara in bidding in said lots as aforesaid, was in
17 bad faith, and in pursuance of an intent, combination, or arrangement on the part of him the said Michael O'Hara and the said Francis A. O'Hara, Dr. A. M. Barr, and Christian Dellenbaugh, to hinder, delay, and prevent a sale of said lots to bona-fide purchasers for the purpose of paying the debts of the said firm of O'Hara and Robinson.

These complainants believe, and they so represent to the court, that the said Michael O'Hara, Francis A. O'Hara, Dr. A. M. Barr, and Christian Dellenbaugh, unless they are restrained by injunction from this court, will continue to hinder, delay, and prevent the sale of the aforesaid fourteen acres, and one hundred and fifty perches of ground, and the said lots and the other property of the said Michael O'Hara for the purpose of paying the debts of him, the said Michael O'Hara, and will in other ways interfere with, baffle, hinder, and delay these complainants in performing the duties of their trust as assignees in bankruptcy of the said Michael O'Hara, and prevent them from performing their duties in that behalf, to the great wrong, injury, and loss of the creditors of him, the said Michael O'Hara.

They therefore pray your honorable court, that the United States writ of subpœna may issue out of your honorable court command-
18 ing the said Michael O'Hara, Francis A. O'Hara, Dr. A. M. Barr, as well in his own right as guardian of the said Francis A. O'Hara, and the said Christian Dellenbaugh, to be and appear in your said court on a day and time to be named in said subpœna and under a certain pain to be named therein, then and there to answer all and singular the aforesaid premises, and to stand to, perform, and abide all such orders and decrees therein as to your honorable court shall seem meet. And they further pray that your honorable court will make an order upon the said Francis A. O'Hara, with her husband the said Michael O'Hara, and her guardian the said Dr. A. M. Barr, commanding them and each of them to convey and release to these complainants, as assignees in bankruptcy, of the said Michael O'Hara by due and proper deeds for the purpose, all and any right, title, and interest whatsoever, which they or either of them, and especially the said Francis A. O'Hara may or can pretend or claim to have or to be entitled to, of, into, or out of the said fourteen acres and one hundred and fifty perches of land or of, into, or out of any other of the property, real, personal, or mixed of the said Michael O'Hara. And they further pray your honorable court to grant them the United States writ or writs of injunction to be directed to them, the said Michael
19 O'Hara & Francis A. O'Hara, his wife, Dr. A. M. Barr in his own right, and as guardian of the said Francis A. O'Hara, and also to the said Christian Dellenbaugh, to restrain them and each and every of them from doing or continuing to do any of the wrongful acts hereinbefore complained of, and especially from interfering with these complainants in the sale of the aforesaid fourteen acres and one hundred and fifty perches of ground, or of the aforesaid lots of ground of the aforesaid O'Hara and Robinson, or of any other property whatsoever of the said Michael O'Hara, and from setting up any claim, demand, or title to, in, or out of the said fourteen acres and one hundred and fifty

perches of land, either on behalf of the said Francis A. O'Hara, the said Dr. A. M. Barr, or on behalf of any other person or persons whomsoever, and from setting up any title, claim, or demand on the part of either of said parties, or of any other person or persons whomsoever of, in, to, or out of the said lots of ground of the said O'Hara and Robinson, or of, in, to, or out of any other property of any kind whatsoever of the said Michael O'Hara in the hands of these complainants, as his assignees, or from improperly interfering with or hindering or delaying these complainants in the performance of their duties as assignees in bankruptcy of the said Michael O'Hara.

20 And these complainants further pray that your honorable court will grant them all such further and other relief in the premises as the circumstances of the case require, and to your honorable court shall seem meet; and they will ever pray.

JOHN M. KENNEDY,
JOHN G. MACCONNELL,
Assignees in Bankruptcy of Michael O'Hara.

A. H. MILLER,
T. MACCONNELL,
Solcts. for Plffs.

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

Before me, the subscriber, personally came John M. Kennedy and John G. MacConnell, who, being first duly sworn, do say that the facts as hereinbefore set forth, so far as they know them of their own knowledge, are true, and so far as they have derived the same from others, they believe the same to be true.

JOHN G. McCONNELL.
JOHN M. KENNEDY.

Sworn and subscribed to before me this 6th day of April, 1869.
H. SPROUL, *Clerk.*

21 EXHIBIT A.

This indenture, made the tenth day of July, in the year of our Lord one thousand eight hundred and sixty, between Michael O'Hara, of Liberty Township, late Peebles, in the county of Allegheny, in the State of Pennsylvania, and Francis A. O'Hara, his wife, parties of the first part, and William Harrison, of Liberty Township, late Peebles County, and State aforesaid, and Gilbert L. B. Fetterman of the city of Pittsburgh, in the county and State aforesaid, parties of the second part, witnesseth that the said Michael O'Hara and Francis A., his wife, for and in consideration of the sum of one dollar, lawful money of the United States, to them in hand paid by the said William Harrison and Gilbert L. B. Fetterman, at and before the ensealing and delivery hereof, the receipt whereof they do hereby acknowledge; and for the further consideration of the natural love and affection of the said Michael O'Hara for the said Francis A. O'Hara, for the uses and upon the trusts hereinafter mentioned, have granted, bargained, sold, aliened, enfeoffed, released, and confirmed, and by these presents do grant, bargain, sell, alien, enfeoff, release, and confirm unto the said William Harrison and Gilbert L. B. Fetterman, their heirs and assigns forever, all that certain

22 lot, piece, or parcel of land situate in Liberty Township, formerly a part of Peebles Township, Allegheny County, and State of Pennsylvania aforesaid, and bounded and described as

follows, to wit: Beginning on the southern side of the Mechanic's turnpike, at the line of George Berry's land, and running thence by the line of said Berry's land south twenty-one degrees east fifteen hundred and twenty-two feet (1,522;) thence by land now or late of James B. Murray south seventy-one (71) degrees east four hundred and two feet (402) to a post; thence by land now or late of John McFarland, deceased, north twenty-one degrees west fourteen hundred and ninety-nine (1,499) feet to the Mechanic's turnpike; thence by said turnpike north sixty-eight (68) degrees ten (10) minutes west one hundred and eighty-two (182) to a pin; thence by said turnpike north (66) sixty-six degrees twenty (20) minutes east two hundred and forty-nine (249) feet to the place of beginning, containing, as per survey made by W. H. Boal, October 25th, 1864, fourteen (14) acres and one hundred and fifty perches, the same being part of a larger message, tract, or parcel of land which, by good and sufficient conveyances and assurances in law, became vested in the said John McFarland, and of which he died seized, intestate, leaving surviving him Maria McFarland, his
23 widow, and Sarah D., Francis A., (since intermarried with Michael O'Hara,) and Adda P. his only children and heirs, who being minors, William Harrison was duly appointed their guardian, who, as such guardian, in pursuance of and by virtue of an order of the orphans' court of Allegheny County, at No. 148 of October term, 1865, after having given public notice according to law, did expose the hereinbefore-described premises to public sale, on the 23rd day of December, A. D. 1865, at the homestead of the late John McFarland, deceased, at which time and place the said Michael O'Hara became the purchaser, at one thousand dollars per acre, and which sale so made, on return thereof, was approved to the court, and the said William Harrison was further ordered to execute and deliver to the said Michael O'Hara a deed therefor, on his compliance with the terms of sale, in compliance with which order said William Harrison, as guardian of Sarah D., Francis Arabella, and Adda P., minor children and heirs at law of John McFarland, deceased, and Maria McFarland, widow of said John McFarland, deceased, by their deed dated the seventeenth day of February, A. D. 1866, and intended to be recorded, granted and conveyed the said hereinbefore-described premises to the said Michael O'Hara, as, by
24 reference to all which being had, may more fully and at large appear, together with all and singular the building, improvements, ways, streets, alleys, passages, waters, water-courses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever, unto the hereby granted premises belonging or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, claim, and demand whatsoever of them, the said Michael O'Hara and Francis A., his wife, in law, equity, or otherwise, howsoever of, in, and to the same: To have and to hold the said piece or parcel of land, the hereditaments and premises hereby granted or mentioned, and intended so to be, with the appurtenances, unto the said William Harrison and Gilbert L. B. Fetterman, and the survivor of them, and the heirs and assigns of the survivor of them forever in trust, nevertheless, and for the uses following, and none other, that is to say, for the sole and separate use of Francis A. O'Hara, the wife of Michael O'Hara of Allegheny County, State aforesaid, for and during her natural life, and so as she alone, and such person she shall appoint, shall take and receive the rents, issues, and profits thereof, and so as her said husband shall not in anywise intermeddle therewith to the end and interest that the same shall and may be for her sole and

seperate use, benefit, behoof, and disposal, notwithstanding her present or any future coverture, free and clear of and from the interruption, intervention, and control of her said husband, the said Michael O'Hara, or any future husband she may have, and without being in any way responsible or liable to or for the contracts, debts, or engagements of her said husband, the said Michael O'Hara, or of any future husband she may have, and from and after the dec'ase of the said Francis A. O'Hara, in trust for the use of Michael O'Hara, the husband of the said Francis A. O'Hara, for and during his natural life, and from and after the dec'ase of the said Michael O'Hara, in trust for the use of the heirs of the body of the said Francis A. O'Hara by the said Michael O'Hara begotten or to be begotten forever; and in case of the decease of the said Michael O'Hara and Francis A. O'Hara, his wife, without leaving any lawful heirs of the body of the said Francis A. O'Hara by the said Michael O'Hara begotten, and in default of and for want of such heirs as aforesaid, then and upon the further trust that they, the said William Harrison and Gilbert L. B. Fetterman, or the survivor of them, the heirs, executors, administrators, and assigns of said survivor, shall and will grant, convey, and assure all and
26 singular the aforesaid premises, above particularly described, with the appurtenances and absolute estate of inheritance, in fee-simple thereof, unto the right heir or heirs at law of the said Francis A. O'Hara in fee-simple; provided always, nevertheless, and it is hereby expressly understood and agreed by and between the parties hereto, that it shall and may be lawful to and for the said William Harrison and Gilbert L. B. Fetterman, and the survivor of them, and the heirs, executors, administrators, and assigns of such survivor, at any time during the natural life-time of her, the said Francis A. O'Hara, by and with her consent, and at any time after the death of the said Francis A. O'Hara, during the natural life of the said Michael O'Hara, by and with his consent, signified by his or her becoming a party to and signing, sealing, and delivering a deed of conveyance to sell and dispose of the premises hereby granted, or any part thereof, and by proper deed or deeds, conveyances, or assurances in the law to grant, convey, and assure the same to the purchaser or purchasers thereof, his, her, or their heirs and assigns forever, free and clear of and from all or any trust or limitation whatsoever, or mortgage the same, and, with the proceeds arising from such sale, disposal, or mortgage, to purchase other real estate and to receive conveyances for the same in trust for
27 the same uses, intents, and purposes as are hereinbefore set forth and declared of and concerning the said premises hereby granted. And the said Michael O'Hara and the said Francis A. O'Hara, his wife, and their heirs, the said above mentioned and described piece or parcel of land, with the appurtenances, unto the said William Harrison and Gilbert L. B. Fetterman, or the survivor of them, the heirs and assigns of such survivor, against him, the said Michael O'Hara, his heirs, and against all and every other person or persons whatsoever, lawfully claiming or to claim the same or any part thereof, shall and will warrant and forever defend by these presents.

In witness thereof, the said parties to these presents have hereunto

interchangeably set their hands and seals, dated the day and year first above written.

MICHAEL O'HARA. [SEAL.]
FRANCIS A. O'HARA. [SEAL.]
WILLIAM HARRISON. [SEAL.]
GILBERT L. B. FETTERMAN. [SEAL.]

Signed, sealed, and delivered in presence of—
A. A. HUTCHISON.
J. A. LIPPERT.

Witnesses to signatures of Wm. Harrison and Gilbert L. B. Fetterman:
EDWARD LYNCH.
HUGH DUFF.

[$15 U. S. int. rev. M. O'H., F. A. O'H., July 10, 1866.]

28 Received, the day of the date of the above indenture, of the above-named William Harrison and Gilbert L. B. Fetterman, the sum of one dollar, lawful money of the United States, being the consideration-money above mentioned in full.

MICHAEL O'HARA.

Witness:
A. A. HUTCHISON.

COMMONWEALTH OF PENNA.,
Allegheny County, ss:

On the tenth day of July, anno Domini 1866, before me, a justice of the peace in and for said county, personally came the above-named Michael O'Hara and Francis A. O'Hara, his wife, and acknowledged the above indenture to be their act and deed, and desired that the same might be recorded as such. She, the said Francis A. O'Hara, being of full age, and by me examined seperate and apart from her said husband, and the contents of the said indenture being first made fully known to her, declared that she did of her own free will and accord sign and seal and as her act and deed deliver the same, without any coercion or compulsion of her said husband.

Witness my hand and seal the day and year aforesaid.

J. A. LIPPERT, *J. P.* [SEAL.]

COMMONWEALTH OF PENNA.,
Allegheny County, City of Pittsburgh, ss:

On the 28th day of July, 1866, before me, an alderman in and for said city, personally came the above-named William Harrison and Gilbert L. B. Fetterman, and acknowledged the above indenture to be their act and deed, and desired that the same might be recorded as such.

Witness my hand and seal the day and year aforesaid.

EDWARD LYNCH. [SEAL.]
Alderman.

Recorded Aug. 3, 1866.

29 Upon which bill is endorsed as follows: No. 49. May term, 1869. John M. Kennedy and John G. MacConnell, assignees in bankruptcy of Michael O'Hara, vs. Michael O'Hara et al.

Issue subpœna returnable 1st Monday of May, 1869.

MACCONNELL & MILLER,
Solicitors for Plffs.

APRIL 5, '69.

Filed April 5th, 1869.

$2.00 paid by plffs.

30 UNITED STATES OF AMERICA,
Western District of Pennsylvania, ss:

The President of the United States to Michael O'Hara, Francis A. O'Hara, his wife, Dr. A. M. Barr, in his own right and as guardian of said Francis A. O'Hara, and Christian Dellenbaugh, for certain causes offered before the circuit court of the United States in and for the western district of Pennsylvania, in the third circuit, in the bill in equity of John G. MacConnell and John M. Kennedy, assignee in bankruptcy of Michael O'Hara:

We command and strictly enjoin you and each of you that, laying aside all other matters, and notwithstanding any excuse, you personally be and appear before the judge of the said court, at a session of the same court to be holden at Pittsburgh on the first Monday of May next, to answer concerning those things which shall then and there be objected against you, and to do further and receive what the said court shall have considered in this behalf; and this you are in no wise to omit, under the penalty of ten thousand dollars.

Witness the Hon. Salmon P. Chase, Chief-Justice of the Supreme Court of the United States, at Pittsburgh, this 5th day of April, A. D. 1869, and of the Independence of the United States the ninety-third.

[SEAL.] H. SPROUL, *Clerk.*

The defendants are required to enter appearance in this suit on or before the return day of this writ; otherwise the bill may be take' pro confesso.

31 (Endorsement:) No. 49. May term, 1869. John G. MacConnell and John M. Kennedy vs. Michael O'Hara, Francis A. O'Hara, Dr. A. M. Barr, and Christian Dellenbaugh. Subpœna in equity.

Service.

April 7th, 1869, served personally and by copy on Michael O'Hara and Dr. A. M. Barr, and by copy on Francis A. O'Hara, by giving a copy to her husband, and on Christian Dellenbaugh, by leaving a copy at his residence with an adult member of his family, &c., ans.

THOS. A. ROWLEY, *U. S. M.*
Per H. T. ROWLEY, *Depty.*

United States circuit court for the western district of Penna.

JOHN G. MACCONNELL AND JOHN M. KENNEDY, assignees in bankruptcy, *vs.* MICHAEL O'HARA AND OTHERS. } No. 49. May term, 1869.

And now, to wit, the seventh day of May, A. D. 1869, on motion of Thomas MacConnell, esq., the complainants in the above case have leave to amend their bill of complaint in said case by striking out all that part or parts of such bill which relate to the lots of ground partly in
32 the borough of East Birmingham and partly in Lower St. Clair Township, sold by the sheriff of Allegheny County, as the property of said Michael O'Hara and J. H. Robinson, to Hon. Thomas Mellon, as set forth in said bill, and the said bill is so amended.

And it is further ordered, adjudged, and decreed that the said bill of the complainants, as so amended, be, and the same hereby is, taken pro confesso in default of appearance by defendants.

And it is further ordered, adjudged, and decreed that an injunction issue pursuant to the prayer of the bill, so as aforesaid amended, directed to the said Michael O'Hara and Francis A. O'Hara, his wife, and to the said Dr. A. M. Barr, as well in his own right as guardian of the said Francis A. O'Hara, to restrain them and each and every of them from doing or continuing to do any of the wrongful acts complained of in the said bill, and especially from interfering with the said John G. MacConnell and John M. Kennedy, assignees in bankruptcy of the said Michael O'Hara, in the sale of the said fourteen acres and one hundred and fifty perches of ground described in the deed mentioned in the said bill from the said Michael O'Hara and wife to William Harrison and G. L. B. Fetterman, in trust, and recorded in Allegheny County aforesaid, in deed-book, vol. 201, pages 629 et seq., as being situate in Liberty (formerly Peebles) Township, in said county of Allegheny, or of any other property whatsoever of the said Michael O'Hara, (not including, however, the said lots of ground partly in East Birmingham and partly in lower St. Clair Township,) and from setting up any claim, demand, or title in, to, or out of the same or any part thereof, either on behalf of the said Michael O'Hara or the said Francis A. O'Hara or of the said Dr. A. M. Barr, either in his own right or as guardian of the said Francis A. O'Hara or of any other person or persons whomsoever, and from improperly interfering with or hindering or delaying the said John G. MacConnell and John M. Kennedy in the performance of their duties as assignees in bankruptcy of the said Michael O'Hara.

33

And it is further ordered, adjudged, and decreed that the said Francis A. O'Hara, together with her husband, the said Michael O'Hara, and her guardian, the said Dr. A. M. Barr, both in his own right and as such guardian, be commanded, and each and every of them are hereby commanded, to convey and release to the said John G. MacConnell and John M. Kennedy, as assignees in bankruptcy of the said Michael O'Hara, by due and proper deeds for the purpose, all and any right, title, and interest whatever which they or either of them, and especially the said Francis A. O'Hara, may or can pretend or claim to have, or to be entitled to, of, in, to, or out of the said fourteen acres and one hundred and fifty perches of land, or of, in, to, or out of any other property, real, personal, or mixed, of the said Michael O'Hara, according to the prayer of said amended bill, to be by them held and disposed of for the purpose of their trust as such assignees in bankruptcy.

34

And it is further ordered, adjudged, and decreed that in default of the execution and delivery of said deeds of conveyance and release by the said Francis A. O'Hara and Michael O'Hara and Dr. A. M. Barr to the said John G. MacConnell and John M. Kennedy, as aforesaid, within thirty days from the date of this decree, Henry Sproul, esq., the clerk of this court, is hereby appointed master and commissioner of this court, to make, execute, acknowledge, and deliver such deed or deeds of conveyance and release.

Per curiam.

(Endorsement:) No. 49. May term, 1869. John G. MacConnell and John M. Kennedy, assignees, &c., vs. Michael O'Hara et al. Order amending bill, and taking it pro confesso. Filed May 7th, 1869.

United States circuit court for the western district of Pennsylvania.

JOHN G. MACCONNELL AND JOHN M. KENNEDY, assignees in bankruptcy, *vs.* MICHAEL O'HARA AND OTHERS. } No. 49. May Term, 1869.

35 And now, to wit, the seventh day of May, A. D. 1869, on motion of Thomas MacConnell, esq., the complainants in the above case have leave to amend their bill of complaint in said case by striking out all that part or parts of such bill as relates to the lots of ground partly in the borough of East Birmingham and partly in Lower St. Clair Township, sold by the sheriff of Allegheny County, as the property of said Michael O'Hara and J. H. Robinson, to Hon. Thomas Mellon, as set forth in said bill, and the said bill is so amended. And it is further ordered, adjudged, and decreed that the said bill of complainants, as so amended, be, and the same hereby is, taken pro confesso in default of appearance by defendants.

And it is further ordered, adjudged, and decreed that an injunction issue, pursuant to the prayer of the bill so as aforesaid amended, directed to the said Michael O'Hara and Francis A. O'Hara, his wife, and to the said Dr. A. M. Barr, as well in his own right as guardian of the said Francis A. O'Hara, to restrain them and each and every of them from doing or continuing to do any of the wrongful acts complained of in said bill, and especially from interfering with the said John G. MacConnell and John M. Kennedy, assignees in bankruptcy of the said Michael O'Hara, in the sale of the fourteen acres and one hundred and fifty perches of ground described in the deed mentioned in the said bill from the said Michael O'Hara and wife to William Harrison

36 and G. L. B. Fetterman, in trust, and recorded in Allegheny County aforesaid, in deed-book V, 201, page 629 et seq., as being situate in Liberty (formerly Peebles) Township, in said county of Allegheny, or of any other property whatsoever of the said Michael O'Hara, (not including, however, the said lots of ground partly in East Birmingham and partly in Lower Saint Clair Township,) and from setting up any claim, demand, or title in, to, or out of the same or any part thereof, either on behalf of the said Michael O'Hara or the said Francis A. O'Hara or of the said Dr. A. M. Barr, either in his own right or as guardian of the said Francis A. O'Hara, or of any other person or persons whomsover, and from improperly interfering with or hindering or delaying the said John G. MacConnell and John M. Kennedy in the performance of their duties as assignees in bankruptcy of the said Michael O'Hara.

And it is further ordered, adjudged, and decreed that the said Francis A. O'Hara, together with her husband, the said Michael O'Hara, and her guardian, the said Dr. A. M. Barr, both in his own right and as such guardian, be commanded, and each and every of them are hereby commanded, to convey and release to the said John G. MacConnell and John M. Kennedy, as assignees in bankruptcy of the said Michael O'Hara, by due and proper deeds for the purpose, all and any right, title, and interest whatsoever which they or either of them, and especially the said Francis A. O'Hara, may or can pretend or claim to have or to be *in*titled to, of, in, *to*, or out of the said fourteen acres and one hun-

37 dred and fifty perches of land, or of, in, to, or out of any other property, real, personal, or mixed, of the said Michael O'Hara, according to the prayer of said amended bill, to be by them held and

disposed of for the purposes of their trust as such assignees in bankruptcy.

And it is further ordered, adjudged, and decreed that in default of the execution and delivery of said deeds of conveyance and release by the said Francis A. O'Hara and Michael O'Hara and Dr. A. M. Barr to the said John G. McConnell and John M. Kennedy as aforesaid within thirty days from the date of this decree, Henry Sproul, esq., clerk of this court, is hereby appointed master and commissioner of *of* this court to make, execute, acknowledge, and deliver such deed or deeds of conveyance and release.

By the court.

I, Henry Sproul, clerk of said court, hereby certify that the above and foregoing is a true and correct copy of the order and decree of the court made in the above-entitled case, as the same remains of file in the said clerk's office.

In testimony whereof witness my hand and the seal of said court, at Pittsburgh, this 7th day of May, A. D. 1869.

[SEAL.] H. SPROUL, *Clerk.*

38 (Endorsements of decree:) No. 49. May term, 1869. John G. MacConnell and John M. Kennedy, assignees in bankruptcy of Michael O'Hara, vs. Michael O'Hara et ux., Dr. A. M. Barr, and C. Dellenbach.

Service.

May 10th, 1869, served personally and by copy upon Michael O'Hara and Frances A. O'Hara, his wife, and upon Dr. A. M. Barr, as well in his own right as guardian of the said Frances A. O'Hara.

JOHN HERRON, *Depty.*

Sworn and subscribed before me this 10th day May, 1869.

H. SPROUL, *Clerk.*

JOHN G. MACCONNELL AND JOHN M. KENNEDY, assignees in bankruptcy of Michael O'Hara,

vs.

MICHAEL O'HARA ET AL.

No. 49. May term, 1869. In equity.

And now, to wit, August 21st, 1869, the deed of conveyance, executed by Michael O'Hara and Frances A. O'Hara, his wife, and A. M.
39 Barr, in his own right and as guardian of said Frances O'Hara, to said John M. Kennedy and John G. MacConnell, assignees as aforesaid in accordance with the order of court, made the seventh day of May, A. D. 1869, in the above-stated case, which deed bears date the 14th day of June, 1869, duly acknowledged and recorded in the recorder's office of Allegheny County, in deed-book vol. 244, page 222, presented in open court, and on motion the same is ordered to be filed with the papers in said case, and a minute of the same to be made on the records of said court.

Per curiam.

(Endorsement:) No. 49. May term, 1869. J. M. Kennedy and John G. MacConnell, assignees, &c., vs. Michael O'Hara. Order of court. Filed August 21st, 1869.

Whereas the circuit court of the United States in and for the western district of Pennsylvania, sitting in chancery in proceedings at No. 49, May term, 1869, did order, adjudge, and decree, among other things, that Frances A. O'Hara, together with her husband, Michael O'Hara, and her guardian, A. M. Barr, in his own right and as such guardian, be commanded, and each and every of them were by such order commanded, to convey and release to John G. MacConnell and John M. Kennedy, as assignees in bankruptcy of the said Michael O'Hara,
40 by due and proper deeds for the purpose, all and any right, title, and interest whatsoever which they or either of them, and especially the said Frances A. O'Hara, may or can pretend or claim to have to or to be entitled to, of, in, to, or out of all the following-described property, to wit, a certain lot or piece of ground situate in the city of Pittsburgh, (formerly Liberty Township,) Allegheny County, Pennsylvania, and bounded and described as follows, viz: Beginning on the southern side of the Mechanics' Turnpike, at the line of George Berry's land, and thence, by the line of said Berry's land, south twenty-one degrees east one thousand five hundred and twenty-two feet; thence, by land now or late of James B. Murray, south seventy-one degrees east four hundred and two feet to a post; thence by land of John McFarland, deceased, north twenty-one degrees west one thousand four hundred and ninety-nine feet to the Mechanics' Turnpike; thence, by the said turnpike, north sixty-eight degrees and ten minutes west one hundred and eighty-two feet to a pin; thence, by said turnpike, north sixty-six degrees and twenty minutes east two hundred and forty-nine feet to the place of beginning, containing fourteen acres and one hundred and fifty perches, and of, in, to, or out of any property, real, personal, or mixed, of the said Michael O'Hara, to be by them, the said assignees, held and disposed of for the purpose of their trust as such assignees in bankruptcy:

41 Now, therefore, know all men by these presents, that in obedience to and in pursuance of the aforesaid order of court, and for and in consideration of the premises, and of the sum of one dollar to us in hand paid at and before the ensealing and delivery of these presents, the receipt of which is hereby acknowledged, we, the said Michael O'Hara and Frances A. O'Hara, his wife, the said Dr. A. M. Barr, in his own right and as guardian of said Frances A. O'Hara, all of the city of Pittsburgh, county of Allegheny, and State of Pennsylvania, have granted, bargained, sold, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, release, convey, and confirm, unto the said John G. MacConnell and John M. Kennedy, as assignees in bankruptcy of the said Michael, their heirs and assigns forever, all and any right, title, and interest which we or either of us, and especially the said Frances A. O'Hara, may or can pretend or claim to have or may be entitled to, of, in, to, or out of the said above-described lot or piece of ground containing fourteen acres and one hundred and fifty perches as aforesaid, and also of, in, to, or out of any other property real, personal, or mixed, of the said Michael O'Hara, in accordance with said order of court, together with all and singular the tenements, hereditaments, and appurtenances thereto belonging, or in anywise appertaining, and the reversions, remainders, rents, issues, and prof-
42 its thereof, and also all the estate, right, title, interest, property, claim, and demand whatsoever, as well in law as in equity, of us, the said Michael O'Hara and Frances A. O'Hara, his wife, and the said Dr. A. M. Barr, in his own right and as guardian of the said Frances A. O'Hara, of, in, or to the above-described premises and property,

and every part and parcel thereof, with the appurtenances: To have and hold all and sing'lar the above-mentioned described premises and property hereby conveyed, with the appurtenances, unto the said John G. MacConnell and John M. Kennedy, as assignees in bankruptcy of the said Michael O'Hara, their heirs and assigns forever, to and for their own use and behoof.

In witness whereof, we, the said parties, have hereunto set our hands and seals this fourteenth day of June, A. D. 1869.

MICHAEL O'HARA. [SEAL.]
FRANCES A. O'HARA. [SEAL.]
A. M. BARR. [SEAL.]
A. M. BARR, [SEAL.]
Guardian for Frances A. O'Hara.
A. O'HARA.

Signed, sealed, and delivered in presence of us—the words "grant" in the 19th line, and the words "their heirs and assigns forever," in the 22nd line, 2nd page, made and interlined before signing; the name of Sarah D. Barr wherein it occurs in above deed erased before signing.
W. B. COOK.

[50. Fifty cents United States internal revenue. Conveyance. 50.]

STATE OF PENNSYLVANIA,
Allegheny County, ss:

43 On this fourteenth day of June, A. D. 1869, before me, a notary public in and for said county, personally came Michael O'Hara and Frances A. O'Hara, his wife, and Dr. A. M. Barr, and ackowledged the foregoing indention to be their act and deed, and desired that the same might be recorded as such. And the said Dr. A. M. Barr, as guardian of the said Frances A. O'Hara, acknowledges the foregoing indention to be his act and deed as such guardian, and desired that the same may be recorded as such. The said Frances A. O'Hara, being of full age, and by me examined separate and apart from her said husband, and the contents of the foregoing indenture being first made fully known to her, declared that she signed, sealed, and delivered the same of her own free will and accord, and without any coercion or compulsion of her said husband.

Witness my hand and notarial seal the day and year aforesaid.
[SEAL.] W. B. COOK,
Notary Public.

(Endorsement:) John M. Kennedy and John G. MacConnell, assignees in bankruptcy of Michael O'Hara vs. Michael O'Hara et al. No. 49, May term, 1869. Michael O'Hara, Frances A. O'Hara to John G. MacConnell and John M. Kennedy, assignees in bankruptcy of Michael O'Hara. Filed Aug. 21st, 1869.

44 *Petition of Frances A. O'Hara.—Filed May* 18, 1872.

In the circuit court of the United States for the western district of Pennsylvania.

JOHN G. MACCONNELL AND JOHN M. KENNEDY, assignees in bankruptcy of Michael O'Hara,
vs.
MICHAEL O'HARA, FRANCES A. O'HARA, HIS wife, Dr. A. M. Barr, in his own right and as guardian of said Frances A. O'Hara, and Christian Dillenbaugh. } No. 49. May T., 1869.

Petition of Frances A. O'Hara, one of the defendants named in the above cause and the decree granted therein.

The petitioner respectfully craves leave of the honorable the judges of said court for a hearing and determination of her just cause against the bill and decree in the above proceedings upon the following errors therein and matters of defence on the merits, to wit:

First. Your petitioner was, as set forth in complainants' bill, a minor and a married woman, and the proceedings therein were for the purpose of taking from her, without consideration or pretence of benefit to or for
45 her, a large amount of property upon certain alleged facts in said bill contained. Wherefore your petitioner, as an infant attacked as to her rights and property, had a right to the protection of your honorable court, and now, being of full age, appears on her own behalf and complains and alleges that the court erred—

First. In not appointing in the cause for her a guardian ad litem.

Second. In proceeding and decreeing against her as a minor, and disposing of her rights and property without notice to her, and without any appearance in the cause for her or on her behalf, and without legal notice to any one legally required or obligated to represent her therein.

Third. In treating, so far as it may have been so done, Dr. A. M. Barr, as her guardian, representing her in said proceedings upon simply the allegations of said bill that he was the guardian of her property, without any evidence thereof, and without appointment of the court as guardian ad litem, and without requiring him to appear therein or make answer, or take any action on behalf of your petitioner.

Fourth. In entering a decree against your petitioner, an infant, without any appearance for her or any proofs or evidence of any of the facts in said bill alleged, against her rights and interests therein.

46 Fifth. In entering a decree absolute against your petitioner as an infant, without granting her a day in court after arriving at age to show cause against the same.

Sixth. In entering an absolute and fixed decree at the same term to which said bill was entered, and a decree pro confesso taken contrary to rule eighteen of said court.

Seventh. In not requiring the trustees of the property of your petitioner sought to be taken from her by said proceedings to be made parties thereof or to have any legal notice.

Second. As to the facts alleged in complainants' bill, and upon which the decree is founded against her, she denies the same and says:

First. That the real estate, consisting of fourteen acres and one hundred fifty perches, as described and set forth in the bill of complaint and decree of the court in the above cause, was inherited by her and her two

sisters, Sarah D. McFarland (now Barr) and Ada P. McFarland, from their father, John McFarland, and that the title to the same remained in them until December 23rd, A. D. 1865, when, by proceedings in the orphans' court of Allegheny County, Pennsylvania, at No. 148, October term, 1855, the same were sold to your petitioner, on the bid for her of Michael O'Hara, husband of your petitioner, at the sum of one thou-
sand dollars per acre, who then and there, as was well understood
47 by all the parties to or interested in said sale, purchased and bid in the same for your petitioner, and received the deed therefor, under the legal advice of N. Nelson, esq., attorney at law for the estate, in his own name only, so that a good mortgage might be given for the purchase-money, your petitioner being considered incompetent to execute such mortgage because of her minority and as one of the heirs. And your petitioner further saith, that she had other valuable real and personal property, and that said Michael OHara, her husband, did not pay any money on said purchase, and had paid none at the time of the decree of court granted in this cause.

Second. Your petitioner further saith, that pursuant to said pu'chase for her by Michael O'Hara, and taking title in trust for her, he, the said Michael O'Hara, did, on the 10th day of July, A. D. 1866, in discharge of his duty and just and legal obligations therein, make and execute a conveyance of said real estate to William Harrison and G. L. B. Fetterman, of said Allegheny County, in trust for your petitioner, as set forth in said bill of complaint in this cause and the copy of said deed thereto annexed, which trust the said Harrison and Fetterman then duly accepted, and which deed fully and precisely points out and specifies the only means and power of disposal of said property existing after
the date and acceptance thereof.

48 Third. Your petitioner further saith that while she denies that the facts alleged in said bill of complaint are, if admitted, sufficient to effect her right and interest in said property as above set forth, yet she saith that she denies all the facts alleged in said bill of complaint for the purpose of denying her right, title, and interest under said deed of trust; and she says, in answer thereto, that at no time was said Michael O'Hara ever insolvent or without sufficient property in his own right to much more than pay his just debts unless the same were wasted or sacrificed by the depreciating effects of forced sales in bankruptcy. And even under the effects of such waste and sacrifice your petitioner is assured he has more than enough to meet all his debts, both individual and partnership; that Michael O'Hara, at the time he executed and delivered said deed of trust, was not indebted to any of the firms of which he had been or was a partner, as alleged in said bill, but, as she is well informed and believes, and expects to prove, said Michael O'Hara was a creditor of the firm of which he was then a partner, to the amount of several thousand dollars; that at said date and ever since said firms were solvent; that at the time said deed of trust was delivered the firm of O'Hara and Robinson, mentioned in said bill, were prosperous and making money, as your petitioner was then
and now is well informed and believes, and expects to prove; and
49 said Michael O'Hara's capital and loans and interest due him was about thirty thousand dollars; that at the time said deed of trust was made and accepted, said O'Hara had no individual debts excepting the liability assumed for your petitioner on said real estate, which was well secured thereon; and he had no partnership debts unless in the way current expenses or accommodation paper secured by mortgage, &c., which the partnership was amply able to meet as

they might fall due out of its current receipts or by bills coming due, and means to them belonging, and all of which were met and paid before any act of bankruptcy as alleged against them, as your petitioner is informed, believes, and expects to prove. And your petitioner says that at the time of said deed of trust said Michael O'Hara possessed and had large means of his own to much more than meet his pecuniary liabilities of every character, and any future liabilities and demands which he could have had in contemplation or reasonably anticipate; that said Michael O'Hara did not deed said real estate in trust for your petitioner for any purpose whatever of hindering, delaying, preferring, or defrauding creditors nor any creidtor; and he never transferred any property, real or personal, to your petitioner nor any one else, as your petitioner believes and expects to prove, if required, for any such purpose. And your petitioner alleges that all charges thereof in said bill are utterly false, and that the facts shown
50 in the result of the proceedings against him in bankruptcy are strong evidence thereof; but your petitioner says that all the allegations of said bill are irrelevant as affecting her rights, excepting only the allegations tending to show that said deed of trust was made in fraud of creditors; and further she is not bound to answer.

Fourth. As to the deed of 23rd of May, 1868, referred to in seventh section of said bill as made by your petitioner et al. to N. P. Fetterman and the assignees, complainants, your petitioner alleges that she was deceived as to her rights therein; that she was an infant, and that it was of no effect, as not within the powers granted by the deed of trust upon the interests and titles in which the grantees therein presumed to act; and, further, that it was without consideration, and objected to and opposed before acted on, as said bill fully makes manifest.

Fifth. Your petitioner, anticipating complainants' reply hereto that on the 24th day of August, A. D. 1869, she executed with her said husband a release of their interest in said real estate to the purchasers under the decree in said proceedings, says, that she was but one day over age, and that she executed the same by compulsion under the impression and belief that it was required by the order and decree of said court, and that her said husband would be imprisoned if she did not execute the same, she having been informed that attach-
51 ments were out from said court for his seizure and imprisonment if any of the acts required of them were not performed. And your petitioner says she would not have voluntarily executed said release, and only executed it by fear and compulsion, as aforesaid; and further, that there was no consideration therefor, and no power of making such release under said deed of trust, whereby the same is wholly void and of no effect.

Wherefore your petitioner prays that this honorable court will grant her have the proceedings in the above cause opened and reviewed, and that her answer herein made to the allegations of said bill may be filed as her answer therein, and that such proceedings, orders, and decrees may be granted thereon as the just rights of your petitioner and her due protection require and to your honors may be deemed meet.

FRANCIS A. O'HARA.

ALLEGHENY COUNTY, *ss:*

Personally appeared Frances A. O'Hara, the above petitioner, who, being duly sworn, says that the facts set forth in the above petition, so

far as stated on her own knowledge, are true, and so far as stated from her information and belief, she believes them to be true.

FRANCES A. O'HARA.

Sworn & subscribed May 17, 1872.
[SEAL.]

C. C. ATKINSON,
Notary Public.

52 *Affidavit of Maria McFarland.*

No. 49. May term, 1869. In equity.

KENNEDY & MACCONNELL, ASSIGNEES, &C., }
vs. }
M. O'HARA ET AL. }

ALLEGHENY COUNTY, *ss:*

Personally appeared Maria McFarland, who, being by me duly sworn, says that Michael O'Hara married her daughter, Francis A., on the day she arrived at the age of sixteen years, to wit, August 24th, 1864, and that soon thereafter it was arranged by deponent and her family and Wm. Harrison, the guardian of said Francis A., that the tract of land of fourteen acres and one hundred and fifty perches sold by the above proceedings to Joseph Dilworth and Alexander Chambers should be made over to said Francis A., and be and become her property, divested of deponent's interest therein, and the interests of the two sisters of said Francis A., excepting only her dower interest, they being all of the heirs, and both being minors; and in order to accomplish that purpose it was arranged that power to sell should be obtained of the orphans' court of Allegheny County, and that at such sale said Michael O'Hara should bid in the said property for his wife at one thousand dollars an acre, which was considerable less than its actual value, for
53 which price lien was to be given on the property; and deponent says that this arrangement was carried out, and that this deponent, to prevent other bidders, gave out and declared that she would not sign a deed to any one else, and that at such sale Michael O'Hara bid in the property, pursuant to the arrangement aforesaid; and that when the deed therefor, dated February 17, 1866, was drawn up, this deponent and Michael O'Hara and some of the others objected to it, that it was not made to said Francis A.; and Nelson, esq., attorney for the estate, who directed the legal proceedings in the matter, answered thereto that the deed must be so because said Francis A. was a minor, and could not give a good mortgage, but that afterwards Michael O'Hara could execute a deed of trust to her, or words to that effect; and it was agreed by the parties thereto that it should be so done; and in consideration thereof that said property was, after making of the said mortgage, *was* to be deeded over for her said daughter, Francis A. This deponent consented to and did execute said deed along with said guardian, passing her title. And this deponent says she always understood and believes that the deed of trust dated July 10, 1866, by said Michael O'Hara was made to carry out and complete said arrangements and understanding in behalf of said Francis A. O'Hara; and this deponent never knew or heard (except the charge in the above proceedings) or believed that said deed of trust was made for any other purpose than the discharge of the duty imposed on him as aforesaid.

MARIA McFARLAND.

Sworn and subscribed before me this first day of August, 1872.
[SEAL.] C. C. ATKINSON,
Notary Public.

(Endorsed as follows:) Filed August 2nd, 1872.

53½ *Answer of complainants to the petition of respondents to open the decree.*

United States circuit court for the western district of Pennsylvania.

JOHN G. MACCONNELL, AND JOHN M. KENNEDY, assignees in bankruptcy of Michael O'Har, bankrupt,
vs.
MICHAEL O'HARA AND FRANCIS A. O'HARA, his et al.
} No. 49, May term, 1869. In equity.

John G. MacConnell and John M. Kennedy, assignees in bankruptcy of Michael O'Hara, bankrupt, protesting that the petition of Francis A. O'Hara, filed in this case, on the 18th day of May, A. D. 1872, was improperly filed, and that the filing of the same should be disallowed and the petition stricken from the files of the court—having first been duly sworn, do depose and say, in answer to the said petition:

First. That the facts and statements contained in the bill of complaint in this case are correct and true, and all allegations to the contrary contained in the said petition of the said Francis A. O'Hara are untrue.

Second. They deny that the errors, or any of them, charged in said petition as appearing in the proceedings in this case exist.

Third. It is not true that said Michael O'Hara purchased the real estate in controversy at orphans' court sale in trust for the said Francis O'Hara, but such purchase was made on his own individual ac-
54 count; and these respondents show your honors that to No. 37, December term, 1871, of the court of common pleas of Allegheny County, the said Michael O'Hara and Francis A., his wife, brought an action of ejectment against Joseph Dilworth and Alexander Chambers, the purchasers of said real estate at assignees' sale in bankruptcy, for the recovery of said real estate; that in said action of ejectment the said Francis A. O'Hara set up as a ground of recovery the said alleged trust, and examined Maria McFarland and other witnesses in relation thereto; that in said case the said court of common pleas ruled that the evidence did not establish any such trust; which ruling was subsequently affirmed by the supreme court of Pennsylvania upon a writ of error sued out by said O'Hara and wife in No. 95 of October and November term, 1872, of said supreme court. These respondents refer this court to the report of said case in 72nd Pennsylvania State Reports, at page 397.

Fourth. That in the said recited action of ejectment the jury found the following facts, to wit:

"That on the 10th of July, 1866, the date of the deed from Michael O'Hara and wife to Fetterman and Harrison in trust, the said Michael O'Hara was largely indebted and thereafter continued so to be, and the firm of O'Hara and Robinson, of which he was a member, was at
55 the date aforesaid in pecuniary embarrassment and likely to become insolvent, and this state of things continued until about July, 1867, when said firm did fail, and the said Michael OHara, upon a creditors'

petition, filed in the month of August, 1867, was adjudged an insolvent bankrupt, and the land in dispute was needed to pay his debts existing at the date of said deed, and was sold by his assignees in bankruptcy for that purpose."

And the said jury in said action of ejectment found said deed of July 10th, 1866, to be fraudulent as to creditors and null and void. And said court of common pleas, on the 8th day of June, A. D. 1872, entered judgment in favor of the defendants in said action of ejectment upon the verdict of the jury, which judgment was affirmed by the supreme court of Pennsylvania, at No. 95, October and November term, 1872. These respondents make the record of said action of ejectment and judgment of the supreme court part of this answer.

Fifth. And these respondents show your honors that, after the entry of the decree in this case which the petitioner seeks to have set aside, these respondents, as assignees in bankruptcy of Michael O'Hara, on the day of July, 1869, exposed said real estate to public sale, and sold the same to Joseph Dilworth and Alexander Chambers for the price or sum of $23,059.81, subject, however, to the payment by the pur-
56 chasers of a mortgage for $12,449.92, and its interest, which Michael O'Hara had given to William Harrison, the then guardian of the minor children of John McFarland, deceased; that said Dilworth and Chambers purchased said real estate upon the faith of the aforesaid decree of this court, and upon report of said sale the same was confirmed by the court, and thereupon a deed of conveyance was executed and delivered by the said assignee to the said purchasers.

Sixth. That on the 25th day of August, 1869, the day after the said Francis A. O'Hara had attained her majority, she voluntarily executed, in connection with her husband, the said Michael, a quit-claim deed to the said Dilworth and Chambers for said real estate, a copy of said deed being hereunto annexed as part of this answer; that said quit-claim deed was prepared in the office of N. P. Fetterman, esq., the counsel of the said Francis A. O'Hara, and there executed by the grantors therein, in the presence of their counsel, Mr. Fetterman, and of Dr. A. M. Barr, who had succeeded William Harrison in the guardianship of the said Francis A. O'Hara; that after the delivery of said quit-claim deed, the said Dilworth and Chambers paid to the said Francis A. O'Hara, in the presence of her husband, her counsel, Mr. Fetterman, and her late guardian, Dr. A. M. Barr, her portion then due, viz, $2,970.60, of the aforesaid mortgage, which Michael O'Hara had given to William Har-
57 rison, guardian, and which the said Dilworth and Chambers had assumed to pay in their purchase at assignees' sale, and at the same time they paid a like sum of money to Mrs. Barr, the sister of said Francis, being her portion of said mortgage then due, and on the next day they paid the like sum of money to the guardian of Ada P. McFarland, being her portion of said mortgage then due, and they also paid the arrears of interest due the widow of said John McFarland, deceased, on account of her interest in said mortgage. And these respondents say that the allegations made by the said Francis A. O'Hara in her said petition, that she executed the said quit-claim deed by compulsion and under the impression and belief that it was required by the decree of this court, and that her husband would be imprisoned if she did not execute the same, &c., are wholly untrue; and they aver that she executed the same voluntarily and intelligently, and they further aver that upon the faith of that release or quit-claim deed the said Dilworth and Chambers made the payments to the said Francis A. O'Hara and her sisters and mother hereinbefore stated.

Seventh. Your respondents further state that the said Dilworth and Chambers paid the respondents, as assignees of said Michael O'Hara, the amount of their bid, and the same has been disbursed, under the direction of the United States district court for the western district of Pennsylvania in bankruptcy, in paying the debts of
58 the said bankrupt, Michael O'Hara, and after exhausting said fund and all the assets of said bankrupt, there remains still a large amount of his indebtedness unpaid, to wit, about six thousand dollars, so far as these respondents now know.

Therefore, these respondents pray that the said petition of the said Francis A. O'Hara be disallowed and refused.

JOHN G. MACCONNELL.
JOHN M. KENNEDY.

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

John G. MacConnell and John M. Kennedy, being duly sworn, say the facts set forth in the above answer are true, as they verily believe.

JOHN G. MACCONNELL.
JOHN M. KENNEDY.

Sworn to and subscribed before me this 23rd day of May, A. D. 1874.

H. D. GAMBLE,
Clerk.

59 *Copy of quit-claim deed from O'Hara and wife to Dilworth and Chambers.*

Know all men by these presents that we, Michael O'Hara and Francis A. O'Hara, his wife, of the city of Pittsburgh, State of Pennsylvania, for and in consideration of the sum of one dollar to us in hand paid by Joseph Dilworth and Alexander Chambers, of the city and State aforesaid, the receipt whereof is hereby acknowledged, have remised, released, and quit-claimed, and by these presents do remise, release, and quit-claim, unto the said Joseph Dilworth and Alexander Chambers, and to their heirs and assigns forever, all that certain piece or parcel of land situate in the twenty-second ward of the city of Pittsburgh aforesaid, bounded and described as follows, to wit: Beginning on the southern side Mechanics' turnpike road, at the line of George Berry's land, thence, by said Berry's land, south twenty-one degrees east fifteen hundred and twenty-feet; thence, by land now or lately of James B. Murray, south seventy-one degrees east four hundred and two feet to a post; thence, by land of heirs of John McFarland, deceased, north twenty-one degrees west fourteen hundred and ninety-nine feet to the aforesaid Mechanics' turnpike road; thence, by said turnpike road, north sixty-eight degrees ten minutes west one hundred and sixty-two feet to a pin; thence, by said turnpike road, north sixty-six degrees twenty minutes east, two hundred and forty-nine feet to the place of beginning;
60 containing fourteen acres and one hundred and fifty perches, being the same piece or parcel of land that William Harrison, as guardian of the minor children of said John McFarland, deceased, and Maria McFarland, deceased, by their deed dated February 17, A. D. 1866, recorded in volume 201, page 827 and 828, conveyed to the aforesaid Michael O'Hara, and that John M. Kennedy and John G. MacConnell, assignees in bankruptcy of said O'Hara, under and by virtue of an order of the district court of the United States for the western

district of Pennsylvania, sold and conveyed to Joseph Dilworth and Alexander Chambers; together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversions, remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand whatsoever of us, the said Michael O'Hara and Francis A. O'Hara, his wife, or of either of us, either in equity or law, of, in, and to the above-bargained premises: To have and to hold the same to the said Joseph Dilworth and Alexander Chambers, and to their heirs and assigns forever.

In witness whereof we have hereunto set our hands and seals this 25th day of August, in the year of our Lord one thousand eight hundred and sixty-nine.

MICHAEL O'HARA. [SEAL.]
FRANCIS A. O'HARA. [SEAL.]

Signed and sealed in the presence of—
A. M. BARR.
N. P. FETTERMAN.
WM. B. NEEPER.

[50 cts. rev.-stamp cancelled.]

61 STATE OF PENNA.,
City of Pittsburgh, ss:

Before me, the subscriber, an alderman in and for said city, personally came the above-named Michael O'Hara and Francis A. O'Hara, his wife, who, in due form of law, acknowledged the above release to be their act and deed, and desired that the same might be recorded as such. The said Francis A. O'Hara, being of full age and by me examined separate and apart from her said husband, and the contents of the foregoing deed of release being first made fully known to her, declared that she did voluntarily, and of her own free will and accord, seal, and as her act and deed deliver, the same, without any coercion or compulsion of her said husband.

In testimony whereof I have hereunto set my hand and seal this twenty-fifth day of August, one thousand eight hundred and seventy-nine.

WM. B. NEEPER, [SEAL.]
Alderman.

Recorded August 27th, 1869, vol. 244, page 303.

(Endorsed as follows:) John G. McConnell et al., assignees, vs. Francis A. O'Hara et al. Answer to respondents' petition to open decree. Filed May 23rd, 1874.

62 In the United States circuit court for the western district of Pennsylvania.

JOHN G. MACCONNELL AND JOHN M. KENNEDY, assignees in bankrupty of Michael O'Hara,
vs.
MICHAEL O'HARA, FRANCES A. O'HARA, his wife; Dr. A. M. Barr, in his own right, and as guardian of said Frances A. O'Hara, and Christian Dellenbaugh.

No. 49. May term, 1869. In equity.

To the honorable the Supreme Court of the United States:

The appeal of Michael O'Hara and Frances A. O'Hara, his wife, in right

of said Frances A. O'Hara, defendant in the above suit, (impleaded with Michael O'Hara, Dr. A. M. Barr, in his own right and as guardian of said Frances A. O'Hara and Christian Dellenbaugh,) respectfully showeth:

That, upon the fifth day of April, A. D. 1869, the above-named complainants filed their bill in the circuit court of the United States for the western district of Pennsylvania against the above-named defendants, alleging that this appellant, said Frances A. O'Hara, was a minor under the age of twenty-one years, and had for the guardian
63 of her property Dr. A. M. Barr, and that her husband, said Michael O'Hara, being unable to pay his debts on the 10th day of July, A. D. 1866, did then, with his wife, said Frances A. O'Hara, execute and deliver to William Harrison and G. L. B. Fetterman a deed of trust, for and in favor of said Frances A. O'Hara, for fourteen acres and one hundred fifty perches of land, in the city of Pittsburgh, in said western district, in consideration of one dollar and natural love and affection.

And that on Aug. 27, A. D. 1867, a petition in bankruptcy was filed against said Michael O'Hara, on which he was adjudged a bankrupt November 9th, A. D. 1867.

And that on December 11th A. D. 1867, said plaintiffs were duly chosen assignees of said Michael O'Hara, and on December 17th, A. D. 1867, the property and effects of said Michael O'Hara, bankrupt, were duly assigned to them, said plaintiffs, by the register in bankruptcy.

And that said Michael O'Hara did not return said fourteen acres and one hundred and fifty perches as part of his property, but that the same actually belonged to him, and said deed of trust was a deed of gift, made by him when he was largely indebted and was about to become, as he thereafter did become, more largely indebted, and was made in fraud of his creditors, and to hinder and delay them.

And that said plaintiff had been prevented from selling said land at public sale as the property of said Michael O'Hara, which they
64 had attempted to do by notices thereat by said A. M. Barr claiming said land as belonging to said Frances A. O'Hara.

And by said bill praying for an order upon said Michael O'Hara, Frances A. O'Hara, and her guardian, said A. M. Barr, commanding them and each of them to convey and release to said plaintiffs, as assignees in bankruptcy of said Michael O'Hara, *of* all and any right, title, and interest whatsoever which they, or either of them, and especially the said Frances A. O'Hara, had, or pretended or claimed to have, or to be entitled to, of, in, to, or out of the said land, and any other property, real, personal, or mixed, of said Michael O'Hara; and further praying for the United States writ or writs of injunction against said defendants from interfering with complainants in the sale of said land.

On said fifth day of April, A. D. 1869, a writ of subpœna was issued in said cause, and was returnable on the first Monday of May, A. D. 1869, and the same was returned as served on all of said defendants excepting said Frances A. O'Hara, who was only served by a copy left with her husband.

And on May 7th, A. D. 1869, no appearance had been entered for any of said defendants, and a decree pro confesso in default of appearance was taken against them; and on the same day, to wit, May 7th, A. D. 1869, in violation of law and the rules of court in such case pro-
65 vided, the prayer of said bill was granted as to said Michael O'Hara, Frances O'Hara, and Dr. A. M. Barr, and a final decree entered against them, commanding them to make, execute, and

deliver due and proper conveyances to said plaintiffs of said fourteen acres and one hundred and fifty perches of land, and enjoining them from any interference in the sale of said land by said plaintiffs.

The said decree was enforced against and complied with by said defendants named therein as aforesaid.

The said land was then, and is, worth over thirty thousand dollars. And the said Francis A. O'Hara was the only party in interest in said bill and affected by said decree.

The said Frances A. O'Hara, appellant, was then a minor, and did not arrive at age until August 24, 1869. Yet said final decree was not only entered contrary to the rules of court, on said May 7th, 1869, but said circuit court did not, before entering said decree, require the appearance and answer of some one on behalf of her, said Frances A. O'Hara, as a minor, nor require any evidence or proof of the allegations in the bill against said minor, affecting her property and estate, as said court was by law bound to do.

Wherefore, these appellants, said Michael O'Hara and Frances A. O'Hara, his wife, in right of said Frances A. O'Hara, appeal from
66 the whole of said decree of said circuit court of the United States, and respectfully pray that the decree of the said circuit court and the bill and proceedings in said cause may be sent to the United States Supreme Court without delay, and that the said Supreme Court will proceed to hear the said cause anew as to said Frances A. O'Hara, and that the said decrees of said circuit court, and every part thereof, may be reversed, and such other decree made as to said Supreme Court shall seem just.

FRANCES A. O'HARA.
MICHAEL O'HARA.

ROBERT WOODS and
M. A. WOODWARD,
Solicitors for Appellants.

WESTERN DISTRICT OF PENNA., *ss:*

Personally appeared Michael O'Hara, one of the above petitioners, who, being duly sworn, says that he read the foregoing petition, signed by him, and knows the contents thereof, and that the same is true to his own knowledge, excepting as to those matters stated therein on information and belief, and as to those matters he believes them to be true.

MICHAEL O'HARA.

Sworn to and subscribed before me this 29th day of July, 1874.

H. D. GAMBLE,
Clerk U. S. Circuit Court.

Filed August 5th, 1874.

67 *Order of court granting appeal.—Filed August 5th*, 1874.

And now, to wit, August 4th, 1874, on the petition of Michael O'Hara and Frances A. O'Hara, his wife, in right of said F. A. O'Hara, an appeal to the Supreme Court of the United States is hereby allowed to the said Michael O'Hara and Frances A. O'Hara, in right of said Frances.

By the court.

68 UNITED STATES OF AMERICA,
Western District of Pennsylvania, set:

To John G. McConnell and John M. Kennedy, assignees in bankruptcy of Michael O'Hara, greeting:

You are hereby cited and admonished to be and appear at a Supreme

Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to an appeal entered in the clerk's office of the United States circuit court, wherein Michael O'Hara and Frances A. O'Hara, his wife, in right of said Frances A. O'Hara, appellants, and you are defendants, to show cause, if any there be, why the decree rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand this fourth day of August, A. D. 1874.

W. McKENNAN,
Judge of U. S. Circuit Court.

WESTERN DIST. OF PENNA., *ss:*

And now, to wit, August 22nd, 1874, citation served personally & by copy upon John M. Kennedy and John G. McConnell, & by giving them each a certified copy of this writ.

J. W. MACDONALD.

Sworn to and subscribed before me this 22nd day of August, A. D. 1874.

H. D. GAMBLE, *Clerk.*

(Indorsed:) No. 49. May term, 1869. John M. Kennedy and John G. MacConnell, assignees, vs. Michael O'Hara et al. Citation. Filed Aug. 5th, 1874.

69 In the circuit court of the United States for the western district of Pennsylvania.

JOHN G. MACCONNELL AND JOHN M. KENNEDY, assignees,
vs.
MICHAEL O'HARA ET AL. } No. 49. May term, 1869.

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

I, H. D. Gamble, clerk of the circuit court of the United States for the said district, do hereby certify that the annexed and foregoing pages contain a true copy of the record and proceedings in the above-entitled case, so full and entire as the same remains of record and on file in my office.

In testimony whereof I have hereunto signed my name and affixed the seal of the said court, at Pittsburgh, this 21st day of August, A. D. 1874.

[SEAL.] H. D. GAMBLE, *Clerk.*

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

I, William McKennan, judge of the United States circuit court for said district, do hereby certify that H. D. Gamble above named was, at the time of making the above certificate, and is now, clerk of the said court, and that the said certificate made by him is in due form of law.

W. McKENNAN,
U. S. Circuit Judge.

PITTSBURGH, *Aug. 21st*, 1874.

(Indorsement on cover:) No. 249. Michael O'Hara and Frances A. O'Hara, his wife, in right of said Francis A. O'Hara, appellants, vs. John G. MacConnell and John M. Kennedy, assignees in bankruptcy of Michael O'Hara. W. Pennsylvania C. C. U. S. Filed 16 September, 1874.

IN THE

Supreme Court of the United States,

No. 249 OCTOBER TERM, 1875.

MICHAEL O'HARA and FRANCES A. O'HARA his wife, in right of said Frances A. O'Hara,

Appellants,

VERSUS

JOHN G. MACCONNELL and JOHN M. KENNEDY, Assignees in Bankruptcy of Michael O'Hara.

Appeal from the Circuit Court of the United States for the Western District of Pennsylvania.

BRIEF ON THE PART OF APPELLANTS.

M. W. WOODWARD,
J. W. KIRKER,
Attorneys for Appellants.

PITTSBURGH:
A. A. Anderson & Son, Book and Job Printers, No. 99 Fifth Avenue.
1875.

IN THE

Supreme Court of the United States.

No. 249 OCTOBER TERM, 1875.

MICHAEL O'HARA and FRANCES A. O'HARA, HIS WIFE, in right of said FRANCES A. O'HARA, Appellants,

VERSUS

JOHN G. MACCONNELL and JOHN M. KENNEDY, Assignees in Bankruptcy of Michael O'Hara.

Appeal from the Circuit Court of the United States for the Western District of Pennnylvania.

BRIEF ON THE PART OF APPELLANTS.

STATEMENT OF THE CASE.

Frances A. O'Hara, appellant, inherited, with her two sisters, a large and valuable piece of land, now in the city of Pittsburgh.

By a family arrangement, in which the mother and guardian of said Frances A. joined, (see Rec., pp. 19 and 21,) proceedings at law were instituted to convey over to said Frances A. O'Hara, then a minor, 14 acres and 150 perches of said land. A public sale was made by William Harrison, the guardian. The land was bid in for said Frances A. by her husband, Michael O'Hara. By the stupid mistake of their attorney (Rec., p. 19,) the deed therefor, dated February 17, 1866, was made to Michael O'Hara, "*so that a good mortgage might be given for the purchase money.*" After which he was to re-convey to his said wife, Frances. Said Frances A. O'Hara owned other valuable real and personal property, and her said husband never paid any money on said purchase. (Rec., p. 19).

There was delay in O'Hara obtaining the deed, but on the 10th of July, 1866, he made a deed of trust of said property in favor of

his said wife, &c. (See Deed, on Rec., pp. 8, 9, 10, 11). William Harrison and G. L B. Fetterman were by said deed constituted trustees, and joined as parties in the execution thereof.

At that time Michael O'Hara was not only solvent, but was, as well as his wife, wealthy. He had no personal debts, and only a moderate amount of firm debts in the way of the ordinary business of a partnership in the glass business. (Rec., p. 19, foot).

The next year said firm sustained heavy losses by fire, and as a result of quarrels in the firm, said O'Hara was, August 27, 1867, forced into bankruptcy, and after enormous sacrifices of property, expenses, &c., presents the rare spectacle of a bankrupt who paid all his liabilities and has a balance left.

The defendants, John G. MacConnell and John M. Kennedy, as assignees of Mr. O'Hara, bankrupt, on April 5, 1869, filed a bill (Rec., p. 1, &c.,) against "Michael O'Hara, Frances A. O'Hara, his wife, Dr. A. M. Barr, in his own right and as guardian of said Frances A. O'Hara and Christian Dellebaugh," alleging that said deed of trust "was in fact a deed of gift made by said Michael O'Hara when he was largely indebted, and when he was about to become, as he did thereafter become, largely indebted, and that said deed of gift was so made by him in fraud of his creditors," &c. (Rec., p. 3, bot. and end, p. 4, top,) praying for an injunction upon the defendants restraining them from setting up title in Frances A. O'Hara, and an order commanding them to convey and release to the complainants therein. (Rec., pp. 7, 8).

The bill was not served on Frances A. O'Hara personally. (Rec., p. 12, "*Service.*") On the others it was served April 7, 1869.

On May 7, 1869, the complainants in said bill, (see Rec., pp. 12, 15,) amended their bill, and the same day entered a decree *pro confesso* in default of appearance, and also a final decree, notwithstanding that rules 18 and 19 of said Court provides that such a final decree shall only be entered at the next term after the entry of a decree *pro confesso*, and then only in case the matter is proper to be decreed in default of an answer or proof, and notwithstanding that it was known to the Court by said bill, and the absence of any appearance or answer thereto, that, as was the fact, (Rec. pp. 1, 20,) said Frances A. O'Hara was a minor, not personally served, not represented in Court except by the naked allegation that one A. M. Barr was her guardian, and that her rights and interests in prop-

erty, worth even now about $100,000, were being finally adjudicated upon without requiring some one, as was the duty of the Court, to appear and make answer for her.

The trustees of said land were not made parties to said bill.

The appellant came into Court on her petition, (see Rec., pp. 18–21,) supported by affidavit of her mother, (Rec., p. 21.)

The appellees answered, (Rec., p. 22, &c.,) setting up a voluntary conveyance by Frances A. O'Hara, August 25, 1869, the day after she had attained her majority. She did that under threat of enforcing the decree of Court, and moreover, if the deed of trust was valid, that conveyance was void, as has been decided by our Supreme Court. They set up in connection therewith a receipt by her on the mortgage given by her husband, which is another point decided not sufficient to make valid the exercise of a power with which she was never clothed. And as to the alleged defeat of said Frances A. O'Hara in an action of ejectment for said land, on the ground that the evidence did not establish a trust, the question is now in Court to be re-tried in an action of ejectment brought by the trustee under said deed of trust, and the former action was improperly brought.

The petition of said Frances A. O'Hara was refused, and the matters for consideration here are as to the errors in entering such decree, and not as to facts which have since arisen and [illegible] dispute and present litigation.

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Her appeal is therefore in time

ASSIGNMENT OF ERRORS.

1. The court erred in granting a decree *pro confesso* against Frances A. O'Hara in default of appearance.

2. The court erred in granting a final decree against any of the defendants in the bill, and particularly in granting such decree against said Frances A. O'Hara, a minor.

3. The court erred in granting an amendment of the bill, a decree, *pro confesso*, and a final decree on the same day, and at the same time.

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3. The court erred in granting an amendment of the bill, a decree, *pro confesso*, and a final decree on the same day, and at the same time.

4. The court erred in granting a decree against said Frances A. O'Hara, as a minor, and disposing of her rights and property without notice to her or to any one duly made known to the court as legally bound to represent her interests therein, and without any appearance in the cause by or for her, or on her behalf, and without appointing or requiring some one in a capacity of guardian *ad litem* to act and answer for her.

5. The court erred in granting the decree made against Frances A. O'Hara an infant, without any appearance or answer by or for her, and without any proofs or evidence before the court of any of the facts in the bill alleged.

6. The court erred in granting the decree made without granting to said Frances A. O'Hara her day in court to show cause against the same after she should attain her majority.

7. The court erred in entering such decrees when on the face of the bill it appeared that there were trustees for said minor, of the property affected who were not made parties to the bill or proceedings.

8. The court erred in not appointing a guardian *ad litem* for said Frances A. O'Hara.

9. The court erred in not opening the proceedings in this cause on the petition and answer of said Frances A. O'Hara, filed May 17, 1872, and allowing her to defend her rights and property.

BRIEF OF ARGUMENT.

The decree in this case is in direct conflict with Rules 18 and 19 of the "Rules of Practice for the United States Courts of Equity." Rule 18 says: "It shall be the duty of the defendant, unless the time shall be otherwise enlarged for cause shown, by a judge of the court, upon motion for that purpose, to file his plea, demurrer, or answer to the bill in the clerk's office on the rule day next succeeding that of entering his appearance. In default thereof, the plaintiff may, at his election, enter and order (as of course) in the order book, that the bill be taken *pro confesso*, and thereupon the cause shall be proceeded in *exparte*, and the matter of the bill may be decreed by the court *at the next ensuing term thereof accordingly*, if the same *can* be done without an answer, *and is* no decree *proper to be decreed*," &c.

The first Monday of May, 1869, was under Rule 17 the appearance day, same as rule day, for those served, the service being on April 7. The decrees were made May 7, 1869. (See Rec., p. 12, &c.)

The defendants had, at all events, to the next rule day, viz, the first Monday of June next, to plead, demur, or answer, and a decree *pro confesso* could not be taken until after that time.

And in no case could "the matter of the bill" be decreed until the next November term of the court.

Rule 19 says: "When the bill is taken *pro confesso*, the court may proceed to a decree at the next ensuing term thereof," &c.

The decree was, then, a gross error, to say nothing as to whether "the matter of the bill was proper to be decreed."

There are no other rules on the subject.

"Where a defendant to a suit is an infant, the Court will appoint a proper person to put in his defence for him, and generally to act on his behalf in the conduct and management of the case." "The duty of such guardian is to put in the proper defence for the infant; and it seems that he is responsible for the propriety and conduct of such defence."

"So anxious are Courts of Equity to protect infants that a decree cannot safely be obtained against an infant, upon the mere fact of taking the bill *pro confesso*, or upon an answer in form by the

guardian *ad litem*. The answer in such case generally is, that the infant knows nothing of the matter, and therefore, neither admits nor denies the charges, but leaves the plaintiff to prove them as he shall be advised, and throws himself upon the protection of the Court. A decree upon such an answer will not bind the infant, and he can open it or set it aside when he comes of age. No laches can be imputed to an infant, and *no valid decree can be awarded against him merely by default. The plaintiff in every such case ought to prove his demand, either in Court or before a Master, and the infant* is usually entitled to a day to show cause, when he comes of age." *Brightley's Treat. on Ex. Juris. in Penna.*, pp. 408, 409, secs. 519, 620.

The above is the language of Rogers, J., in Rogers vs. Smith, 4 *Penna. State Reports*, 4 *Barr*, p. 93.

Mills vs. Dennis *et al.*, 3 *Johns, Cp. Rep.*, 367.

Massie vs. Donaldson, 8 *Ohio Rep.*, 381.

"In a suit against an infant, process should be served upon him and a guardian *ad litem* appointed by the Court." *Daniel's Ch. Pl. & Pr.*. 4 *Ed.*, vol. 1, p. 161, n. 1.

"It is error to enter a decree against infant defendants without assigning them a guardian *ad litem*."

Carrington vs. Brents, 1 *McLean*, 17.
Roberts vs. Stanton, 2 *Munf.*, 129.
Irons vs. Crist, 3 *A. K. Marsh*, 143
St. Clair vs. Smith, 3 *Ham*, 363.
Crockett vs. Drew, 5 *Gray*, 399.
Swan vs. Horton, 14 *Gray*, 179.
Darby vs. Richardson, 3 *J. J. Marsh*, 544.
Beverly vs. Miller, 6 *Munf.*, 99.
Shields vs. Bryant, 3 *Bibb.*, 525.

It must appear of record that the guardian accepted the appointment. Daniel vs. Hannagan, 5 *J. J. Marsh*, 49.

The Court will not appoint upon nomination of the plaintiff. Knickerbocker vs. DeFrast, 2, page 304.

The guardian *ad litem* must bring every matter involving the rights of the infant to the consideration of the Court, *and must make a vigorous* defence of the interests of the infant, and is liable in damages to the infant for injury suffered by his neglect therein.

Dow vs. Jewell. 21 *N. H.*, 486, 487.
Knickerbocker vs. DeFrast, 2, page 304.
Scouce vs. Whitney, 12 *Ill.*, 150.
Enos vs. Capps, 12 *Ill.*, 255.

An infant married woman must defend by guardian. *Daniels' Ch.* (*4th Am. Ed.*,) p. 163, and authorities referred to.

The court will remove a guardian *ad litem* who does not do his duty. *Ibid.*

It is a ground for impeaching a decree that it does not give the infant a day in court on coming of age. *Ibid*, p. 164. 2 *Kent*, (11 Ed.,) 245, &c.

The infant may impeach a decree for fraud, collusion, or error in the decree. *Daniels, Ch.*, p. 173.

No answer or admissions by or on behalf of an infant can exonerate the plaintiff "from his duty in proving as against the infant *the whole case* upon which he relies." *Ibid*, pp. 169, 170.

Rogers vs. Smith, 4 *Barr.*, 93.
Holden vs. Hearce, 1 *Beav.*, 445, &c.
Willis vs. Dennis, 3 *Johns, Ch.*, 367, &c.
Massie vs. Donaldson, 8 *Ohio*, 377.
2 *Kent*, (11 Ed.,) 245.

An amendment of the bill relieves defendant from default, and "renders a previous order to take the bill *pro confesso* inoperative," even if done to correct a clerical error, &c.

Daniels, Ch., (4 Am. Ed.,) pp. 424, 425.
Weightman vs. Powell, 2 *De G. & S.*, 570.
12 *Jur.*, 958.

The trustees were necessary parties to the bill. They held and should hold the legal title. The decree professes to strike down their title. (*Equity Rule* 49.)

Daniels, Ch., pp. 220, 222, 246, 247, 266, and cases referred to.

"In the case of a husband and wife, where the suit does not relate to the separate estate of the wife, service upon the husband alone is sufficient, but where it relates to her separate estate, or they are living apart, a copy must be served upon or for each." Same page, 429. Edgson vs. Edgson, 3 *De G. & S.*, 629.

"It may be conceded that if the deed of trust for the separate use of Mrs. O'Hara could be sustained her subsequent deed and release were ineffectual to pass her title under the decision of Lancaster vs.

Dolan, 1 *Rawle*, 231; Thomas vs. Folwell, 2 *Whart.*, 11, and other cases which have followed their lead." O'Hara et ux. vs. Dilworth & Chambers, 72 *Pennsylvania State Reps.*, 402.

J. W. KIRKER,
M. A. WOODWARD,
Attys. for Appellants.

IN THE

Supreme Court of the United States,

No. ~~240.~~ 53

MICHAEL O'HARA, and FRANCES A. O'HARA, his wife, in the right of said FRANCES A. O'HARA,

Appellants,

VERSUS

JOHN G. MacCONNELL and JOHN M. KENNEDY, Assignees in Bankruptcy of MICHAEL O'HARA.

Appellees.

Appeal from the Circuit Court of the United States for the Western District of Pennsylvania.

BRIEF OF APPELLEES.

WM. BAKEWELL,
M. W. ACHESON,
Attorneys for Appellees.

PITTSBURGH:
A. A. Anderson & Son, Book and Job Printers, No. 99 Fifth Avenue.
1876.

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APPELLANTS,

VERSUS

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Assignees in Bankruptcy of MICHAEL O'HARA.

COUNTER STATEMENT OF APPELLEES.

John McFarland died in the year 1861, intestate, seized of about 100 acres of land, of which the 14 acres and 150 perches in controversy are part. He left a widow, Maria McFarland, and three minor children, viz: Frances A., since intermarried with Michael O'Hara, Sarah D., now intermarried with Dr. A. M. Barr, and Ada P. McFarland. William Harrison was appointed guardian of said minors. The said guardian, in No. 148 October Term, 1865, applied to the Orphans' Court of Allegheny Co., Pa., to sell a portion of the real estate of his wards, and an order was made authorizing him to sell the land now in controversy at public sale. After due notice the guardian sold said 14 acres and 150 perches of land at public vendue to the said Michael O'Hara (who was the highest bidder) for the sum of $\$14{,}937\frac{50}{100}$, payable as follows, viz: one-third at the death of widow, one-fourth of the balance in hand, and the residue in three equal annual payments, with interest, the deferred payments to be secured by bond of said purchaser and a mortgage on the premises.

The Orphans' Court having confirmed the sale, on December 30th, 1865, the guardian, on February 17, 1866, by deed of that

date, conveyed the land in dispute to the said Michael O'Hara, and took his bond and mortgage to secure the deferred payments, to wit, $12,447.92. It seems that the hand money was not paid at the time the guardian delivered the deed, but he took therefor the judgment note of Michael O'Hara, which was entered up July 24, 1866, in No. 370 Sept. Term, 1866, of the Court of Common Pleas. Subsequently, to wit, in the fall of 1867, or thereabouts, this judgment was paid out of the proceeds of certain real estate of Michael O'Hara, which was sold by a Master under a decree of the District Court of Allegheny County.

Shortly after his purchase of said property at the Orphans' Court sale, O'Hara being engaged in a hazardous business, (the manufacture of glassware,) became largely involved in debt. On the 5th of April, 1866, he and his co-partner in the firm of O'Hara & Robinson, J. Harvey Robinson, executed to Thomas Mellon their bond in the penal sum of $50,000, conditioned for the payment o the sum of $25,000, and a mortgage to secure the same on some firm property in Lower St. Clair township. The mortgaged premises were wholly insufficient to pay this debt, and a large portion thereof, to wit: about $14,497 $\frac{74}{100}$ was paid by O'Hara's assignees in bankruptcy. The firm was very heavily in debt on the 10th day of July, 1866. At that date the firm had paper outstanding to the amount of $58,605, certainly. At that date the firm was really insolvent. On July 11th, 1866, a check of O'Hara & Robinson for $634,08 on the Peoples National Bank went to protest, they having overdrawn their account.

On the 10th day of July, 1866, Michael O'Hara executed to G. L. B. Fetterman and William Harrison the deed of trust under which the appellants claim the land in dispute. The trust, it will be perceived, is for the separate use of Frances A. O'Hara, the wife, during her life, and from and after her death *for the use of Michael O'Hara himself during his life, &c.*

The firm of O'Hara & Robinson suspended in the month of July, 1867, and on August 27th, 1867, certain creditors of Michael O'Hara filed a petition to have him adjudged a bankrupt. In that proceeding there was a trial by jury, and he was found by the jury an *insolvent* bankrupt, and was so adjudged in November, 1867.

The land in controversy was needed to pay O'Hara's debts, and

without it the assignees could not have paid more than 35 or 40 per cent. of his debts. A large portion of these debts existed at the date of the said trust deed.

O'Hara returned little or no property to his assignees, and what they recovered for the purpose of paying his debts was mostly recovered by legal process. In attempting to sell the property now in controversy they met with difficulty in obtaining purchasers and a fair price by reason of the existence of the fraudulent deed of trust aforesaid. In order, therefore, that the assignees might be enabled to sell the land at a fair price and thus obtain money to pay the debts of the bankrupt, they instituted proceedings in equity in the Circuit Court of the United States for the Western District of Pennsylvania, to remove the cloud from the title, alleging the fraudulent character of the deed of trust, and praying for a decree of conveyance of any pretended claim of the *cestuis que trust*. The parties, after full notice, did not pretend to deny the allegations of fraud. The bill was taken *pro confesso* and a decree made by the court directing the conveyance to the assignees, which conveyance was executed by the appellants, together with the guardian of Mrs. O'Hara. After the execution of these papers, the assignees made a public sale of the property, on the day of July, 1869, to Joseph Dilworth and Alexander Chambers, for the price or sum of $23,059.81, subject, however, to the payment by the purchasers of the mortgage for $12,447.92 and its interest, which Michael O'Hara had given to Wm. Harrison, guardian of the minor children of John McFarland, deceased.

Before accepting the conveyance from the assignees, or paying their purchase money, the purchasers from the assignees, having a wholesome distrust of Michael O'Hara, and acting, too, under the advice of their counsel, requested a quit claim deed from O'Hara and wife, after she had attained her majority. The request was made to N. P. Fetterman, Esq., the then counsel of O'Hara and wife. The quit claim deed was drawn in Mr. Fetterman's office, and was there executed by Mr. and Mrs. O'Hara, in the presence of their counsel and of her late guardian, on the 25th day of August, A. D. 1869, the day after she attained her majority.

At the time of the delivery of the quit claim deed, the purchasers from the assignees paid to Mrs. O'Hara, in the presence of her husband and of their then counsel, N. P. Fetterman, Esq., and of

her brother-in-law and late guardian, Dr. A. M. Barr, (who had succeeded Harrison in the guardianship,) her portion then due, viz.: $2,970\frac{60}{100}$, of the aforesaid purchase money mortgage which Michael O'Hara had given to William Harrison, guardian, and which said purchasers had assumed to pay under the terms of the sale by the assignees. The above named parties, together with Mrs. Barr, met at the Recorder's office, where the money was paid—the receipts for the same on the margin of the record being dictated by Mr. Fetterman. At the same time and place the purchasers also paid the like sum of $2,970,60 to Mrs. Barr, the same being the portion of said mortgage due her. And on the next succeeding day the purchasers paid the like sum of $2,970.60 to the guardian of Ada P. McFarland. The defendants also paid to Mrs. McFarland the arrears of interest due her as widow upon the one-third of the purchase money which remains charged on the land during her life. Immediately after the delivery of said quit claim deed the defendants paid to O'Hara's assignees their purchase money, $23,059.01, and accepted the deed from the assignees.

During all the aforementioned proceedings and doings not one word was said by any of these people to indicate that the purchase by Michael O'Hara, at the Orphans' Court sale, was made for the benefit of his wife in pursuance of a previous parol agreement.

Subsequently Michael O'Hara and Frances A., his wife, brought an action of ejectment against the purchasers from the assignees in the Court of Common Pleas of Allegheny County, Pennsylvania. In this ejectment the plaintiffs set up as a ground of recovery the said alleged trust, and examined Maria McFarland and other witnesses in relation thereto. The Court of Common Pleas ruled that the evidence did not establish any valid trust, and this ruling was affirmed by the Supreme Court of Pennsylvania upon writ of error sued out by O'Hara and wife. The case is reported in 72 *Penn'a State Reports;* 22 *P. F. Smith*, 397.

In the said ejectment the jury found the deed of July 10th, 1866, fraudulent as to creditors and void. The jury also found specifically the following facts, to wit: "That on the 10th July, 1866, the date of the deed from Michael O'Hara and wife to Fetterman and Harrison, in trust, the said Michael O'Hara was largely indebted and thereafter continued so to be, and the firm of O'Hara & Robinson, of which he was a member, was, at the date aforesaid, in pecuniary

embarrassment, and likely to become insolvent, and this state of things continued until about July, 1867, when said firm did fail, and the said Michael O'Hara, upon a creditor's petition, filed in the month of August, 1867, was adjudged an insolvent bankrupt, and the land in dispute was needed to pay his debts existing at the date of said deed, and was sold by his assignees in bankruptcy for that purpose."

On the 18th May, 1872, (see page 18 of the printed record,) Frances A. O'Hara presented her petition to the court below, the Hon. Wm. McKennan, Circuit Judge, presiding, praying to have the proceedings in the court below opened and reviewed, &c.

The assignees in bankruptcy—the appellees—filed their answer to said petition, and the same is published at page 22 of the printed record. At page 24 of the printed record will be found a copy of the quit claim deed, which Michael O'Hara and Frances A., his wife, executed to the purchasers from the assignees, and which deed was made part of their answer to Mrs. O'Hara's petition.

O'Hara and wife set the cause down for hearing before the Hon. Wm. McKennan upon the aforesaid petition of Frances A. O'Hara and answer of the assignees in bankruptcy, and the cause was argued upon the petition and answer. Judge McKennan refused the prayer of the petition.

ARGUMENT FOR THE APPELLEES.

Equity rules 18 and 19, upon which the appellants rely, do not cover the case.

According to the exigency of the subpœna the defendants were required to enter an appearance on or before the return day thereof; otherwise, the bill might be taken *pro confesso*.

Frances A. O'Hara was duly served with process in the person of her guardian, Dr. A. M. Barr. Her husband was also served, and as we read the Marshal's return, she also was personally served. But this latter service is immaterial. Legal service was duly made upon her guardian. None of the defendants made any application to the court to permit them to file answers, but they suffered the decree *pro confesso* to stand, and the assignees to sell the land in controversy without objection.

The cause was heard below upon the application of Frances A. O'Hara to open the decree, and for review, &c., upon her petition and the answer of the assignees in bankruptcy there to. [Vide pp. 18, 19, 20, 21, 22, 23, 24 and 25 of the printed record.]

The cause was set down for hearing by the counsel of Frances A. O'Hara upon said petition and answer, and therefore the allegations of the answer are to be taken as true.

It would indeed be extraordinary should a chancellor open up a decree upon the petition of a party standing in the attitude of Frances A. O'Hara.

After she arrived at her majority she took from the purchasers from the assignees in bankruptcy about $3000 in cash, (being part of the moneys that these purchasers were to pay under the terms of the bankrupt sale,) and with her husband executed a quit claim deed to the purchasers. That quit claim deed was drawn up by Mrs. O'Hara's own counsel, N. P. Fetterman, Esq., and was executed in his office and attested by Mr. Fetterman, her late guardian Dr. A. M. Barr, and the alderman, who certifies, under the Pennsylvania statute, to the separate examination of Mrs. O'Hara, and her declaration that she executed the quit claim deed voluntarily and of her own free will and accord, and without coercion or compulsion of her husband.

The money which Frances A. O'Hara took from the purchasers from the assignees, as above mentioned, she has retained to this hour. Furthermore she stood by and permitted the purchasers to pay large sums of money to her sister, Mrs. Barr, to the guardian of Ada P. McFarland, and her mother. All these payments were made upon the faith of the proceedings which Frances A. O'Hara now seeks to impeach, and also upon the faith of the quit claim deed executed by herself and husband.

Under these circumstances will equity listen to her demand to disturb the decree of the court below?

In determining the effect of the quit-claim deed of August 25th, 1869 and the receipt of Mrs. O'Hara, with the consent of her husband, and in his presence, and that of her then counsel, and of her late guardian, from the purchasers from the assignees, of her share then due of the O'Hara mortgage—we are not to confine ourselves simply to the quit claim deed itself and the receipt of the money.

The Circuit Court of the United States had made a decree in equity establishing the fraudulent character of the voluntary deed of trust of July 10th, 1866, and in pursuance of the decree of court a conveyance had been executed to the assignees in bankruptcy by O'Hara and wife and Dr. A. M. Barr, her guardian. Subsequently the assignees in bankruptcy sold the land at public sale. That sale was approved by the United States District Court sitting in bankruptcy, and by the terms of the decree of approval the purchasers became bound to pay the O'Hara mortgage.

Now granting for the sake of the argument that there were irregularities in the proceedings in the United States Circuit Court, nevertheless the decree stood on the 25th day of Augugt, 1869, unreversed and unimpeached. All parties were acting on the faith of that decree on the 25th day of August, 1869.

Where a sale is made of land no one can be permitted to receive both the money and the land. *Smith vs. Warden*, 7 *Harris*, 424. In that case it is said: "It was held by this court, at the late sitting in Harrisburg, that equitable estoppels of this character apply to infants as well as adults, to insolvent trustees and guardians as well as persons acting for themselves, and have place as well when the proceeds arise from a sale by authority of law, as when they spring from the act of the party." *Ibid.*, 430.

Where a guardian received the minor's share of the purchase money and paid the balance, deducting expenses of maintenance, to the minor, on his arrival at 21, it was *held* that the minor was concluded from contesting the title of the purchaser. *Wilson vs. Bigger*, 7 *Watts & Serg.*, 111.

Though an assignment be in its nature calculated to delay creditors, and therefore voidable, yet, if a creditor take a dividend under it, he cannot afterwards question its validity. *Adlum vs. Yard*, 1 *Rawle*, 163.

Estoppels, as from the receipt of purchase money, &c., operate against married women. *Smilie's Estate*, 10 *Harris*, 130. *Couch vs. Sutton*, 1 *Grant*, 114.

Claiming under a decree is a bar to a *writ of error or certiorari*. *Bailey vs. Bailey*, 8 *Wright*, 274. *Gratz vs. Beates*, 9 *Wright*, 505.

Frances A. O'Hara, after she reached the full age of 21 years, acting freely, and with the approbation of her counsel, husband and late guardian, took from the purchasers or the assignees her share of the mortgage, which they were to pay under the decree of the court.

In effect she claimed the benefit of the decree which she now seeks to impeach.

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